

Draft FY 05-07 National Program Guidance

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA)

SECTION I. INTRODUCTION AND CONTEXT

EPA's national enforcement and compliance assurance program is characterized by its multi-media scope and breadth. The national program is responsible for maximizing compliance with 10 distinct federal environmental statutes dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances, and pesticides. Most of these statutes have multiple program elements, and OECA carries out compliance and enforcement activities in a total of 28 separate program areas. The statutory and regulatory requirements of these programs apply to 41 million regulated entities, an enormous and diverse universe which needs to achieve and maintain compliance.

The national program is organized into two major components: a limited number of national program priorities that focus on significant environmental risks and noncompliance patterns; and core program activities conducted to implement required elements of environmental laws and to maintain a credible presence to deter noncompliance. This guidance is organized around these two component: Section II focuses on national priorities and Section III. focuses on core program activities.

The size and complexity of the national program presents many challenges for strategic planning, resource deployment, and program implementation. OECA has altered significantly its strategic and annual planning processes to meet these challenges.

Improvements in Strategic and Annual Planning

The changes OECA has implemented for the FY 2005-2007 planning cycle reflect Agency initiatives to move towards a more collaborative work planning process that relies on performance information as the basis for management decision making. In FY 2001, at the direction of the Deputy Administrator, a steering group of Agency senior managers was convened to assess, and make recommendations for improving Agency management practices with the goal of focusing the Agency on achieving measurable results. The recommendations of the Steering Group were contained in the report *Managing for Improved Results*¹, which was released in November 2002. Some of the recommendations contained in the report are:

- Development of a new strategic architecture that better reflects the results that the Agency is trying to achieve
- Adoption of a "mutual accountability" approach that increases regional, state, and tribal

¹ The complete MIR report is available on Agency intranet at the following address:
<http://intranet.epa.gov/ocfo/perform/results/steeringgroupreport-final.pdf>

collaboration in development of goals, measures, and priorities; and emphasizes the use of performance information to evaluate the effectiveness of all parties

- Development of Regional Plans that more clearly tie regional activities to the Agency's strategic architecture, and describe regional priorities
- Reform of the Memorandum of Agreement (MOA) process for establishing performance agreements between regions and headquarters (in particular, streamlining the process and better aligning it with Agency, regional, and state planning processes)

In September 2002, the Office of Enforcement and Compliance Assurance (OECA) established its own team of headquarters and regional senior managers (i.e., the Planning Review Team) to assess and make recommendations for improving OECA's planning, priority setting, and performance measurement practices. The team focused on the following areas: problem identification; better integration of OECA, media program, regional, state, and tribal priorities; strategy development and implementation; increasing efficiency and flexibility of the MOA process; and impact on OECA of the recommendations in the *Managing for Improved Results* report. The recommendations in the final report of Planning and Review Team have resulted in the following changes to the OECA planning and priority setting processes.

- OECA established a Planning Council comprised of headquarters and regional senior managers to serve as an advisor to OECA's Assistant Administrator on all matters relating to program planning (e.g., recommending national priorities, setting annual performance goals and measures).
- OECA's priority setting and strategic planning processes have been synchronized with the Agency's three-year strategic planning cycle.
- OECA revised its strategic objectives in the new Agency Strategic Plan so they more clearly link program activities to desired results, and include performance baselines and goals².
- OECA has expanded outreach to Agency media program, regions, states, tribes, and other stakeholders in the identification and selection of national priorities.
- Beginning with FY 2005 OECA will replace the MOA with a more streamlined and flexible process for establishing performance agreements.

In the past OECA used the MOA to record regional commitments to Core Program activities and national priorities over a two-year period. Beginning with FY 2005 OECA's work planning will be done on a three-year cycle to coincide with the Agency strategic planning cycle, and the MOA will be replaced with the following components:

- **Core Program Guidance** - describes the basic requirements and components of a credible monitoring and enforcement program. The core program guidance is organized

²For more detailed information on the Agency's Strategic Plan and Goal 5 please refer to: <http://www.epa.gov/compliance/planning/direction/longterm.html>

around OECA's media programs, and identifies specific commitments that the regions are being asked to make in support of the Core Program.

- **Regional Plans**³ - identify activities the regions will undertake to help achieve the national enforcement and compliance goals outlined in the sub-objectives of Goal 5 in the Agency's new strategic plan. The Regional Plans also identify regional priorities so they can be considered when headquarters and regions are determining appropriate regional activity levels in support of the core program and national priorities.
- **National Priority Performance-Based Strategies** - in order to ensure that we are achieving desired results, and to better manage our efforts each of the selected national priorities will have a performance-based strategy developed for it. The strategies will contain performance goals and measures, as well as communication and exit strategies.
- **Online Commitment System** - allows regions to record commitments to specific activities and requires narrative explanation only when there is an exception to performance expectations set forth in this guidance. This system, combined with the components above; will replace the paper-based MOAs.

EPA's Strategic Plan: The Compliance Objective and Sub-objectives

Within EPA's Strategic Plan, the national enforcement and compliance assurance program is included within Goal 5, which states that EPA will "improve environmental performance through compliance with environmental requirements, preventing pollution and promoting environmental stewardship." OECA's programs are included under objective 5.1 on improving compliance. Because of the large number (28) of program elements in the national program, the sub-objectives serving objective 5.1 are instead organized around achieving intermediate and end outcomes through the use of four tools – compliance assistance (sub-objective 5.1.1), compliance incentives (sub-objective 5.1.2), and compliance monitoring and enforcement (sub-objective 5.1.3). This sub-objective structure is used to organize the discussion of individual programs throughout this guidance.

³For more specific information on the regional plans go to:
<http://www.epa.gov/ocfo/regionplans/regionplans2.html>

SECTION II.

NATIONAL PRIORITIES FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

OECA expects to complete the selection of national program priorities by mid-March 2004. The process used to select national priorities for FY 05-07 has featured increased collaboration with EPA Regional Offices, EPA program offices, state and tribal partners, and the general public; and more emphasis on factual and quantitative analysis of noncompliance issues and environmental problems.

OECA began the process of selecting the national priorities in August 2003 by requesting that the regions solicit their states and tribes for potential program priorities. Regions were asked to consider the following criteria when nominating national priorities:

- Significant Environmental Benefit: Can significant environmental benefits be gained, or risks to human health or the environment be reduced through focused EPA action?
- Pattern of Noncompliance: Are there identifiable and important patterns of noncompliance?
- Appropriate EPA Responsibility: Are the environmental/human health risks or the patterns of noncompliance sufficient in scope and scale such that EPA is best suited to take action or pursue a collaborative approach in which EPA leverages other resources?

These priority selection criteria defined the scope and nature of the environmental problems that OECA could realistically expect to address. To collect information about environmental risks and noncompliance patterns, a number of regions conducted internal discussions about existing and potential national program priorities; and engaged their state and tribal regulatory partners in discussions of existing and potential national program priorities.

In addition to the regions soliciting potential priorities from their states and tribes, Headquarters consulted with the EPA air, water, pesticide and solid waste national program managers. OECA gathered feedback from the program offices on progress made on the existing priorities, and explored with them any new program areas warranting a national enforcement and compliance assurance focus.

After analyzing all of the nominations received, the OECA Planning Council met in October 2003 to narrow the list of potential priorities for publication in a Federal Register (FR) notice seeking public comment. The Council used the three criteria listed above to evaluate the potential priorities, and carefully considered the resource implications of each of the candidates. The Council recommended the following candidate priorities for further consideration and public comment; they were published in the FR on December 12, 2003 with a 30-day comment period:

- Safe Drinking Water Act - Microbials
- Clean Water Act - Wet Weather
- Clean Air Act - New Source Review/Prevention of Significant Deterioration

- Clean Air Act - Air Toxics
- Asbestos Hazard Emergency Response Act (AHERA)/Asbestos in Schools
- Ports of Entry
- Tribal
- Auto Salvaging Sector
- Federal Facilities
- Miscellaneous Plastics
- Environmental Justice
- Fuels Management
- Significant Noncompliance Oversight
- RCRA - UST
- RCRA - Mineral Processing
- Financial Assurance

The Planning Council then sponsored a National Priorities meeting in January 2004. At that meeting regions, states, tribes, and invited state associations had the opportunity to discuss the proposed priorities in greater depth and select a subset for further consideration. Attendees at the National Priorities meeting voted on their top choices for national priorities for the FY 2005 - 2007 planning cycle. The Planning Council met to discuss the comments and feedback raised at the National Priorities Meeting, and to finalize a list of six candidates for recommendation to Administrator Leavitt for his final approval.

When the final list of national priorities is selected in mid-March 2004, the Planning Council will form teams of headquarters and regional personnel, supplemented by state and tribal representatives, to develop performance-based strategies for each national priority. These strategies will include: a detailed analysis of the environmental risk or noncompliance pattern to be addressed; the combination and sequence of tools to be employed; an overall priority goal; and the performance measures to be used to assess the progress towards achieving the goal.

SECTION III. CORE PROGRAM ACTIVITIES

These activities are conducted to implement required elements of environmental laws and to maintain a credible presence to deter noncompliance. This section begins with a discussion of those aspects of national guidance which apply across all core program areas, then provides a discussion about individual program elements under various environmental statutes.

Performance expectations and regional responses are denoted within the core guidance in one of three forms: targets and commitments, guidance and projections, or performance benchmarks and exceptions. The first pair, target and commitment, is used when there is a quantitative target that the regions are being asked to commit to (e.g., conduct 10 inspections in a particular program area). The second, guidance and projection, is used when the regions are being asked to project the level of activity that will occur in a certain program area (e.g., guidance: regions should determine the number of inspections to conduct in a particular area to maintain a credible presence, projection: the number of inspections to be conducted by the region). The last pair, performance benchmark and exception, is used to explain a particular performance requirement (e.g., performance benchmark - 100% of inspection data should be entered into ICIS) when there is no associated target or projection. A response is required from the region if they will not be able to meet the benchmark. Whatever the form the performance expectation takes, they will be used to measure and assess regional performance.

1. GUIDANCE APPLIED TO ALL CORE PROGRAMS

Ensuring compliance involves the use of all available tools including compliance assistance, compliance incentives, compliance monitoring and enforcement that are appropriate to address specific environmental risks and noncompliance patterns. In using these tools in the national program there are certain fundamental activities and requirements that need to be carried out for all core program areas.

A. Compliance Assistance (*Sub-objective 5.1.1*)

Compliance Assistance includes activities, tools or technical assistance that provide clear and consistent information for: 1) helping the regulated community understand and meet its obligations under environmental regulations; and 2) helping other compliance assistance providers to aid the regulated community in complying with environmental regulations. Assistance may also help the regulated community find cost-effective ways to comply with regulations and go beyond compliance through the use of pollution prevention techniques, improved environmental management practices, and innovative technologies, thus improving environmental performance.

The Compliance Assistance Core Program in the Regions should include the following:

1. A strong Regional compliance assistance core program infrastructure:
 - A full-time Regional Compliance Assistance Coordinator to provide a focal point for planning and coordination of compliance assistance efforts;
 - Communication networks within the region, across regions, with headquarters, states, and external environmental assistance providers;
 - Mechanisms to coordinate and strategically build compliance assistance into national, regional and state planning processes.
2. Strategic planning for up front consideration and appropriate use of compliance assistance in addressing environmental problems:
 - Plan and coordinate compliance assistance across organizational and programmatic boundaries (e.g., media programs, enforcement, environmental justice, small business) and include states and other stakeholders in this process;
 - Use integrated strategic approaches to target and address environmental problems, and consider all available tools, such as compliance assistance, compliance incentives (self-audits, opportunities for pollution prevention and Environmental Management Systems (EMS)), compliance monitoring, and enforcement (See November 27, 2002, Framework for a Problem-Based Approach to Integrated Strategies).
3. Tracking and measuring results of compliance assistance activities:
 - Report on planned and actual compliance assistance projects in the Integrated Compliance Information System (ICIS)
 - Report all compliance assistance project outputs and for significant compliance assistance projects, also measure and report outcomes. Significant compliance assistance projects include activities that support the national OECA priorities or regional priorities.
 - Report on the following measures for compliance assistance:⁴
 - ▶ Percentage of regulated entities reporting increased understanding of regulatory requirements as a result of compliance assistance;
 - ▶ Percentage of regulated entities reporting that they changed or improved environmental management practices;
 - ▶ Percentage of entities reporting that they reduced or eliminated pollution;
 - ▶ Percentage of non-EPA assistance providers reporting improved ability to deliver compliance assistance as a result of using EPA compliance assistance tools and resources;
 - ▶ Number of regulated entities reached through EPA or EPA sponsored or funded compliance assistance;
 - ▶ Outcomes of federal compliance assistance on-site visits should be reported through the Compliance Assistance Conclusion Data Sheet in

⁴Regions may also choose to report on other measures, e.g., pounds of pollutants reduced as a result of compliance assistance.

ICIS.

4. Providing compliance assistance targeted to appropriate problems, sectors and geographic areas (i.e., EJ) directly or through other providers (states, P2 providers, etc.)
 - Develop compliance assistance tools, conduct training, workshops, presentations, onsite visits and/or distribute outreach materials;
 - Share compliance assistance tools and opportunities within the regions and externally, e.g., with states, tribes, trade associations;
 - Serve as a wholesaler of compliance assistance to enable other providers to offer assistance, including, for example, providing training and tools to providers;
 - Place new tools on Compliance Assistance Clearinghouse as they are developed;
 - Market and wholesale compliance assistance opportunities and tools, and share success stories.
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B. Compliance Incentives (*Sub-objective 5.1.2*)

EPA promotes compliance through the use of incentive policies. These policies reduce or waive penalties under certain conditions for facilities which discover, promptly disclose and correct environmental problems. EPA encourages the use of such policies, which include the Audit Policy, various market based incentives, compliance auditing protocols, and environmental management systems.

EPA's Audit Policy, Small Business Policy and Small Community Policy provide incentives for the regulated community to resolve environmental problems and come into compliance with federal laws through self assessment, disclosure, and correction of violations. Under various Compliance Incentive Program (CIP) initiatives, companies or industrial sectors can disclose and correct violations in exchange for reduced or waived penalties, while the risk of enforcement increases for those not taking advantage of this opportunity. EPA also promotes the disclosure of environmental information in accordance with the SEC's mandatory corporate disclosure requirements as a means of promoting improved environmental performance. Increasing public access to corporate environmental information helps maintain a level playing field for companies, and raises company awareness concerning environmental issues.

Regions are expected to carry out at least the following activities associated with compliance incentives:

- promote OECA's compliance incentive policies (e.g., small business policy, audit policy), with the assistance of state and local agencies, to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response.
- consider and follow-up on, as appropriate, self-disclosures submitted under the OECA audit policy and small business policy;

C. Monitoring and Enforcement (*Sub-objective 5.1.3*)

Compliance Monitoring

All Regional programs should conduct appropriate compliance monitoring activities, which include conducting compliance inspections and investigations, record reviews, targeting, and responding to citizen complaints.

The core compliance monitoring program is defined by a number of specific activities. Compliance monitoring is comprised of all the activities conducted by a regulatory agency to determine whether an individual facility or a group of facilities (geographical, by sector or by corporate structure) are in compliance with environmental laws and regulations, as well as established settlement agreements (e.g., Administrative Orders, Consent Decrees, etc.). Compliance determinations are generally documented and filed using various methods (e.g., database, inspection report, etc.). Compliance monitoring activities occur before and at the point when either compliance or an actual violation is determined.

Examples of important compliance monitoring activities include:

- creating a viable field presence and deterrent by conducting compliance inspections, surveillance, and civil investigations in all the environmental media (air, water, waste, toxics, wetlands, etc.) in both delegated and non-delegated programs;
- performing compliance data collection, analysis, evaluation and management;
- developing compliance monitoring strategies that include targeting and information gathering techniques;
- collecting and analyzing environmental samples at specific facilities and sites, and ambient locations;
- reviewing and evaluating self-reported data and records, environmental permits and other technical information relating to compliance with environmental laws and regulations;
- maintaining compliance files and managing compliance records;
- responding to tips, complaints, and referrals from private citizens, other governmental entities, and non-governmental organizations;
- providing training to fulfill the requirements of EPA Order 3500.1, and other applicable Orders (1440.1, 1440.2, etc.);
- preparing reports and inputting compliance findings and inspection results into national databases;
- completing and performing manual reporting or using ICIS, the outcomes of inspections and evaluations using the Inspection Conclusion Data Sheet (ICDS). Analyze and evaluate the outcomes of compliance monitoring activities;
- analyzing and evaluating the outcomes of compliance monitoring activities and reporting those through the Inspection Conclusion Data Sheet process in ICIS;
- working with state, tribal, and local environmental regulatory agencies to monitor environmental compliance with environmental laws by private, state, Federal, and tribal facilities;
- identifying, tracking, and coordinating with state, tribal, and local environmental

- agencies those violators that are, or should be designated as, Significant Noncompliers, High Priority Violators, or Watch List facilities;
- identifying potential environmental crimes through the civil compliance monitoring program, and referring and/or assisting in bringing environmental criminals to justice;
- developing compliance monitoring tools such as inspection guides, checklists, or manuals;
- promoting the recommendations detailed in the OC guidance, *Final National Policy, Role of the Inspector in Providing Compliance Assistance During Inspections, June 25, 2003*.
- developing, negotiating, or overseeing state or tribal compliance and enforcement grants;
- providing training, assistance, support and oversight of state and tribal compliance inspectors;
- issuing and tracking Federal credentials to state and tribal compliance inspectors;
- performing compliance screens for various Headquarters and/or state programs such as Performance Track.
- Conducting federal oversight inspections/evaluations to corroborate state inspection findings. Oversight inspections/evaluations are a principal means of evaluating both the quality of an inspection program and inspector training (Revised Policy Framework for State/EPA Enforcement Agreements, August 25, 1986).

It is expected that the regions, for each of their programs, will conduct many of these activities in any fiscal year. The specific combination of activities will depend upon the availability of intra- and extramural resources, and working agreements made between state and tribal governments.

Compliance monitoring does NOT include: 1) preparation of Notice of Violations (NOVs), warning letters, and administrative or judicial complaints, and 2) development of evidence and other information where a violation has already been determined to have occurred. Instead, these activities fall under the civil and criminal enforcement programs.

Enforcement

EPA's national enforcement and compliance assurance program utilizes various types of enforcement actions to correct and deter noncompliance. Civil enforcement authorities include administrative and judicial actions. In situations where violations are knowing and willful EPA uses criminal enforcement actions. In using its enforcement authorities EPA regions are responsible for:

- adherence to the applicable program enforcement response policies (ERPs), the timely and appropriate (T&A) guidances (where these exist), and implementation of the Watch List project;
- adherence to OECA Nationally Significant Issues (NSI) guidance in all cases as applicable;
- track compliance with consent decrees and administrative orders, and take all necessary actions to ensure continued compliance;

- ensure that all required data is input into the national databases, where applicable, and complete and enter the case conclusion data sheets for all concluded actions, including those in the CERCLA program; and
- settle or litigate cases issued in years prior to FY 2005 and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA, and work with the Department of Justice and EPA Headquarters as appropriate to develop, file, prosecute, and/or settle outstanding judicial and administrative actions.

D. Data Quality

The Office of Compliance, Enforcement Targeting and Data Division, is developing a comprehensive Data Quality Strategy that will improve upon the disparate approaches previously used in order to provide a strategic vision and implementation schedule to assure that enforcement and compliance data can be used as an effective tool to manage our program and report on our accomplishments.

- identification of key enforcement and compliance program data fields;
- developing standards for verification and validation of the accuracy of data being entered into key data fields in each data base;
- ensure full implementation of the Watch List project reporting by regional offices along with timely and complete reporting of necessary compliance and enforcement data reporting to national databases;
- periodic random data audits and targeted data clean-ups; and
- updating guidance on the input and use of certain key data fields in each data base, including identifying where underlying media specific program guidance needs to be updated and/or revised.
- certifying quarterly to the enforcement data in the Integrated Compliance Information System (ICIS)
- ensuring adequate data entry into legacy systems by state and EPA personnel.

E. EPA State Relations

Consistent with the process for developing Regional Plans, National Program Guidance, and performance agreements, it is critical to have effective ongoing consultation and communication between EPA and states. Regions and states should ensure that established processes and procedures for notification of inspections and enforcement actions in authorized and non-authorized programs, pursuant to the “no surprises” policy, are in place and may be included in work plans for Performance Partnership Agreements, categorical grant agreements, Performance Partnership Grants. The work plans may be tailored to specific state conditions and levels of performance. In negotiating grant work plans, regions and states should consult National Program Guidance and follow EPA grant regulations, i.e., 40 CFR Parts 31 and 35. OECA guidance and policy, such as the 1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and its subsequent addenda, should continue to guide Regional discussions with states.

OECA is currently developing a State Program Review methodology that will provide a consistent process for reviewing the outcomes and results of state compliance and enforcement programs. These reviews, which will first address the air, water, and waste programs, will be in line with OECA's current approach of focusing resources in those areas that will yield the most positive environmental benefit from compliance and enforcement activities, resulting in measurable environmental outcomes. OECA is working with the Regions and states to ensure an effective review process that will be in place by 2004. The criteria and protocols for these reviews will be consistent with the 1986 "Revised Policy Framework for State/EPA Enforcement Agreements" and the media-specific enforcement response policies.

Grants Management

OECA awards a number of assistance agreements to states and non-profit organizations to conduct a variety of activities, particularly in the areas of data management and performance measurement, which are managed by the Regions. OECA wants to emphasize that effective grants management is a high priority for the EPA and OECA. The primary Agency guidance for managing assistance agreements is EPA Order 5700.6, which became effective January 8, 2003 and was recently revised. The Order streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and management. The order encompasses both the administrative and programmatic aspects of the Agency's financial assistance programs. It requires each EPA office providing assistance to develop and carry out a post-award monitoring plan, and conduct basic monitoring for every award.

Innovative Programs

Innovative programs continue to be important to the compliance and enforcement program. Regions and states are encouraged to consider implementation of innovative projects such as Performance Track in their set of priorities. As outlined in the January 19, 2001 memorandum, "Enforcement and Compliance Operating Principles for the National Performance Track Program," as one of the incentives for participation in the first-tier Achievement Track, the Agency has committed to consider all participating facilities as "low priority for routine inspections." All regions are expected to incorporate this commitment into inspection targeting efforts, both in the context of regional targeting and in negotiating with state partners. This includes strategies that use the full range of tools to improve environmental performance and ensure compliance with environmental requirements. In support of the Agency's Achievement Track of the National Performance Track program, the regions (in concert with Headquarters offices and DOJ) are conducting compliance screens of all applicant facilities. The regional effort includes searches of Agency databases, follow-up on information found there, and program by program inquiries about new information not yet accessible on databases. The region will assess the findings against the Performance Track entry criteria, and make recommendations as to the appropriateness of each facility's participation.

F. Note on Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Regions are reminded that Superfund enforcement and RCRA Corrective Action are covered under the new SP's Goal 3. It is important to make sure that the Superfund and RCRA Corrective Action program commitments for Goal 3 are addressed. The commitments for Superfund are to maximize Potentially Responsible Party (PRP) participation at Superfund sites by leveraging PRP resources and recovering costs. The commitments for RCRA Corrective Action are to address the two RCRA environmental indicators (EIs), which measure human exposures under control and migration of contaminated groundwater under control. Regions are encouraged to use enforcement authorities and tools where appropriate to address EI's and final clean-up. National program direction for Superfund activities are developed and conveyed through the SCAP process. RCRA Corrective Action is addressed through the Mutual Performance Agreement (MPA) process.

2. CLEAN WATER ACT PROGRAMS

The Water Program encompasses six separate programs under both the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA), these are:

- the National Pollutant Discharge Elimination System (NPDES) Program,
- the Pretreatment Program,
- CWA Section 404 (Wetlands) Program,
- the Oil Pollution Act Program,
- Public Water System Supervision (PWSS) Program,
- Program, and Underground Injection Control (UIC) Program.

Each program has different characteristics (e.g., some programs have national data bases and some do not), and, as a result, the “core program” varies somewhat from program to program. Therefore, in order to provide clarity, shared core program elements are listed up front followed by a description of compliance and enforcement activities unique to each water program. Regions should also refer to information contained in Section III: Guidance Applied to All Core Programs, for further detail on shared core program elements.

The following core program elements are shared by all of the CWA programs:

- Regions should implement existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)*;
- Regions should consider all available data in implementing the compliance and enforcement activities described below;
- Regions and states must maintain an effective inspection program in each of the water program areas;
- Each violation deserves a response. Regions and/or states are expected to evaluate all violations, determine an appropriate response, per the EMS if applicable, and take that action. Regions should focus actions in the priority areas listed in the work planning guidance while maintaining a presence in all water programs; and
- Regions/states are expected to take timely and appropriate actions against facilities in significant noncompliance (SNC). Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for Federal enforcement.

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Compliance Monitoring

NPDES Program

Performance Expectations

It is an Agency goal to annually provide 100% coverage by EPA and States of all major NPDES facilities and POTWs with approved pretreatment programs or equivalent coverage of a combination of major and priority minor facilities annually. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g. fish advisories, shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs - that is the number of minor facilities substituted for major facilities - should generally be at a 2:1 or greater ratio.⁵

- **Target:** Regions and states must inspect 70 - 100% of majors a year in each state. No trades can be conducted below this floor.
Commitment: Number of EPA and state majors inspections, and percent of universe covered by EPA and states, both broken out by state; provide an explanation if below the target level.
- **Target:** Regions should conduct between 15% - 30% of the total major inspections to be done in a given fiscal year.
Commitment: Number of EPA majors inspections, and percent of universe covered by EPA, both broken out by state; provide an explanation if below the target level.
- **Guidance:** Regions must conduct as many oversight inspections as would be necessary to ensure the integrity of each state's compliance monitoring program.
Projection: Number of oversight inspections conducted per state; provide an explanation if no activity projected in this area.

Biosolids/Sludge

- **Guidance:** Although sludge (or biosolids) is not an area of national priority for OECA, we recognize that some regions expend resources conducting sludge inspections. Therefore, regions who are planning to conduct additional sludge inspections at the expense of other CWA core activities should provide a rationale for their investment in this program and they should report these inspections in PCS.
Projection: Regions should identify the number of anticipated sludge inspections during the fiscal year.

Pretreatment Program

Performance Expectations

⁵This ratio is based on previous work load models which averaged the amount of resources needed to conduct major and minor inspections. All minors inspections that are traded-off for majors MUST be put into PCS/ICIS in order for the Region/State to get "credit" for them.

- **Target:** Annually inspect 100% of the POTWs with approved pretreatment programs in unapproved states.
Commitment: Identify the number of inspections to be conducted, the size of the POTW universe, and the percent of the POTW universe covered; provide an explanation if below the target level.

Where EPA is the control authority, regions should evaluate each SIU file (e.g., review the DMR and periodic compliance reports) and follow-up with field investigations at 100% of the SIUs with violations identified in their periodic reports, or where the region believes that SIU discharge may adversely impact POTW operation or effluent quality or may be impacting receiving water quality.

- **Performance Benchmark:** Conduct field investigations at 100% of the SIUs with violations identified in their periodic reports
Exception: Provide an explanation if the region will not meet the benchmark.
- **Guidance:** Project the number of Federal (and state as appropriate) inspections in approved pretreatment programs.
Projection: Number of inspections (and percent of universe covered) reported by state; provide an explanation if no activity projected in this area.
- **Guidance:** Project the number of Federal (and state as appropriate) investigations in non-approved pretreatment programs.
Projection: Number of investigations (and percent of universe covered) reported by state; provide an explanation if no activity projected in this area.

Section 404 (e.g. Wetlands)

Regions should have a process for identifying, targeting, inspecting, and otherwise responding to illegal activities. Regions are expected to implement the timely and appropriate (T&A) policy. Since only two states have been delegated parts of the Section 404 program, this is primarily a Federal effort. The Regions must also coordinate, as appropriate, with other Federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., Corps of Engineers, NRCS, Fish and Wildlife Service, etc.).

Performance Expectations

- **Guidance:** Project the number of wetlands inspections to be conducted in each fiscal year.
Projection: Number of wetlands inspections; provide an explanation if no activity projected in this area.

Oil Pollution Act (Section 311)

Section 311 is a Clean Water Act authority but responsibility for compliance monitoring, enforcement and implementation resides in a number of different Regional divisions with the following titles: Emergency and Remedial Response; Superfund; Hazardous Waste Cleanup; Environmental Cleanup; Ecosystems Protection and Remediation; Waste Management.

Past compliance and enforcement efforts in CWA 311 have focused on ensuring that regulated sources have maintained the required Spill Prevention Countermeasures and Control (SPCC) plans. Regions should check compliance monitoring at facilities subject to SPCC requirements to ensure that the plans are adequate and meet the regulatory requirements, particularly with regard to physical security requirements. In light of continuing concerns regarding chemical safety, Regions should also consider the following factors in focusing their targeting and inspections efforts:

- significant quantities of oil
- proximity to population centers
- proximity to critical infrastructure

Performance Expectations

- **Guidance:** Project the number of federal SPCC inspections at federal facilities, in Indian Country, and overall.
Projection: Number of federal SPCC inspections broken out by type (i.e., federal facilities, Indian Country, total); provide an explanation if no activity projected in this area.

Enforcement

NPDES Program

Historically, NPDES program guidance has stated that no more than 2% of all major facilities should be on the exceptions list at any one time. This list will now be substituted with the newly developed “Watch List.” In 2004, the Office of Compliance will establish a process of quarterly reviews of facilities on the Watch List that will lead to deliberations in 2005 as to whether any alterations of the 2% exceptions are appropriate.

Section 404 (e.g. Wetlands)

Whenever appropriate in 404 and non-404 water enforcement settlements, regions should use supplemental environmental projects to restore and enhance wetlands and to create wetland mitigation projects.

Oil Pollution Act (Section 311)

While the CWA 311 program does not have a formal Enforcement Management System

(EMS), Regions must have a program to identify violations, to prioritize violations for actions, and then to take appropriate actions. Regions are expected to comply with the Section 311 penalty policy. Some Regions have adopted a Headquarters-approved 311(b) (3) and/or Section 311(j) expedited enforcement program as complements to their traditional administrative and civil judicial enforcement efforts.

Regions are also asked to follow the December 2, 2003 policy on the , “Use of Expedited Settlements to Support Appropriate Tool Selection” paying particular attention to SPCC instructions in Appendix 2.

DATA QUALITY

NPDES Program

There are two components to data management - (1) the programmatic data in the Permit Compliance System (PCS) and (2) the data required to be reported to ICIS from the case conclusion data sheets.

- Headquarters will monitor regional/state PCS entry quarterly.
- Regions are expected to report to ICIS all case initiations--administrative orders, administrative penalty orders, and civil referrals--as well as to complete and enter the case conclusion data sheets for all concluded actions.
- Regions are to complete the ICDS for all NPDES programs (excluding pretreatment) and to enter the data into ICIS.

Performance Expectations

All required data elements (“WENDB”) are expected to be put into PCS. Where activities at majors have been traded off for activities at minors (e.g., inspections), regions and states are expected to input the PCS data for the minors.

- **Performance Benchmark:** 95% data entry for Discharge Management Reports (DMRs) and permit limit data for the past two consecutive quarters, or 90% for the past quarter.
Exception: Provide and explanation if the region will not meet the benchmark.

Section 404 (e.g. Wetlands)

- **Performance Benchmark:** 100% data entry of wetlands inspections, administrative orders, administrative penalty orders, and civil referrals into ICIS; as well as to complete and enter the case conclusion data sheets for all concluded actions.
Exception: Provide and explanation if the region will not meet the benchmark.

Oil Pollution Act (Section 311)

- **Performance Benchmark:** 100% data entry for federal CWA 311 case initiations and conclusions into ICIS, and a case conclusion data sheet should be reported in ICIS for all concluded SPCC cases.
Exception: Provide and explanation if the region will not meet the benchmark.

PROGRAM OVERSIGHT

NPDES Program

Regions should routinely review all DMR reports received for compliance with permit limits. (Note that Regions may accomplish this review through a routine screen of the PCS data and reviewing the DMRs themselves as necessary.) Regions also should routinely review data submitted by states to PCS and review other information available to them on a facility's compliance with its permit and other Clean Water Act requirements.

In reviewing regional performance, EPA will consider the following data that is currently reported into PCS:

- number of SNCs *identified* (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner;
- number of Watchlist facilities per region

Oil Pollution Act (Section 311)

Regions should routinely review the ERNS database on spills to ensure that all spills are being appropriately addressed.

3. SAFE DRINKING WATER ACT (SDWA) PROGRAM

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

Public Water System Supervision (PWSS) Program

Regions should target compliance assistance towards smaller drinking water systems, especially those with part-time operators. Using the data contained in Safe Drinking Water Information System/Federal Version (SDWIS/FED) to identify patterns of non-compliance is one means of targeting which small systems may benefit most from compliance assistance. Regions should work with the states to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform required activities.

More specifically, the regions should focus compliance assistance resources on helping smaller systems comply with the Stage 1 Disinfectants and Disinfection Byproducts Rule and the Long Term 1 Enhanced SWTR, some provisions of which required small systems to take action starting in 2003 and 2004. Compliance assistance efforts will include outreach and education programs to ensure that sources understand both the requirements and the assistance available to help them comply.

We encourage the Regions to use the Local Government Environmental Assistance Network (LGEAN) (www.lgean.org), the National Drinking Water Clearinghouse (www.nesc.wvu.edu/ndwc) and the National Environmental Compliance Assistance Clearinghouse (www.epa.gov/clearinghouse) as sources of compliance assistance information and recommend marketing these resources to drinking water system operators as compliance assistance tools. We also encourage the Regions to make available compliance information packages that can be distributed by sanitary survey inspectors.

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Monitoring

Public Water System Supervision (PWSS) Program

States are required to ensure an effective inspection and sanitary survey program. When appropriate, Regions should also incorporate a SDWA component in all regional multimedia inspections of Federal facilities as outlined in the Federal facilities core program section of this guidance (Section 10). When regions find violations, they should take enforcement action, as required.

Performance Expectations

- **Guidance:** Where the Region has primacy for the sanitary survey program, regions should make their own determinations as to how many Regional inspections should be done in order to maintain an effective inspection and sanitary survey program.
Projection: Number of surveys to be conducted, with a breakout for number on tribal lands; provide an explanation if no activity projected in this area.

Underground Injection Control (UIC) Program

Regions should ensure an effective field presence through routine inspections of all classes of wells. The actual number of inspections and the distribution by well class will depend on the region and whether or not all or part of the program has been delegated to the states.

Enforcement

Public Water System Supervision (PWSS) Program

- **Performance Benchmark:** Regions/states are to address 100% of SNCs for microbial rules
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions/states should address 100% of all other SNCs when the region/state has a small number of SNCs
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** If regions/states have a lot of Chemical/Radiological SNCs, then they are to address 100% of large and medium systems and at least 85% of the small systems.
Exception: Provide an explanation if the region will not meet the benchmark.

DATA QUALITY

Public Water System Supervision (PWSS) Program

Regions and states are expected to ensure that all required data is input into SDWIS, including Federal facilities as applicable. Regions with direct implementation programs, including those on tribal lands, are expected to input the data themselves. If regions are directly implementing any of the new drinking water regulations, they must ensure that the required data is in SDWIS. When available to the regions, all regional sanitary surveys should be entered into the Integrated Compliance Information System (ICIS).

Underground Injection Control (UIC) Program

- **Performance Benchmark:** 100% of Regional UIC inspections should be entered into ICIS.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 100% of Regional UIC enforcement actions should be entered into ICIS and regions should report on the preventive benefits of these cases on the case conclusion data sheets and enter this data into ICIS.
Exception: Provide an explanation if the region will not meet the benchmark.

PROGRAM OVERSIGHT

Public Water System Supervision (PWSS) Program

To ensure adequate program oversight, regions should review data in the Safe Drinking Water Information System (SDWIS) and review other information on compliance available to the region. To ensure that water is safe to drink, the regions should evaluate the results of source water assessments and the unified watershed assessments in targeting some enforcement activities in FY 2005-2007 where sources of drinking water are contaminated or threatened.

In evaluating Regional performance, OECA will look at:

- the number of SNCs identified (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner;
- number (and percent) exceptions;
- number (and percent) exceptions addressed; and number remaining.

Once a drinking water Watch List is in place, this will replace the evaluation of exceptions.

Underground Injection Control (UIC) Program

Regions should routinely review inspection reports, mechanical integrity test results and other information available on the compliance status of injection wells. Regions should also review other information available to them which suggests the existence of Class V well or wells. Based on review of this information, appropriate inspections or enforcement actions should be targeted.

4. FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT PROGRAM

EPA and the public rely on pesticide manufacturers and formulators to provide accurate information about pesticides and their associated risks. Unregistered and ineffective antimicrobials, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public makes inappropriate choices based on inaccurate or misleading information. Farm workers must be informed about exposure to pesticides that are used on agricultural crops and must be informed how to properly handle and apply pesticides.

A major focus in FIFRA is on providing assistance, training, and oversight to states and tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes issuing credentials as appropriate and providing training and grant oversight. Regions should refer to the Federal facilities section of this attachment (Section 10) for guidance on including Federal facilities in core program activities where applicable. EPA is responsible for investigating and enforcing: data quality requirements (FIFRA Good Laboratory Practice Standards), the effectiveness of hospital disinfectant products, unregistered and misbranded products, pesticide producing establishment registrations and the annual submission of production data, import and export requirements, and Registrant's reporting of unreasonable adverse effects under section 6(a)(2) of FIFRA. States conduct product compliance inspections and may take enforcement actions or in some cases, refer the case to EPA. Regarding enforcement of pesticide use provisions, the statute gives primary use enforcement responsibility to the states. However, regions are expected to follow-up on all referrals received from Headquarters and states.

Regions and Headquarters agreed that the following five FIFRA program areas should receive special focus during FY 2005-2007: worker safety, e-commerce, antimicrobial testing, label enforceability, and unregistered sources and product integrity. The specific activities to be undertaken and expected outcomes will be developed by workgroups and will be provided in a separate document.

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Regions should work with pesticide state lead agencies and tribal pesticide agencies to target and conduct inspections and investigations to support the pesticide focus areas identified above. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements.

Regions are expected to track and prioritize tips and complaints, and follow-up, as needed. Follow-up means that the region needs to evaluate the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state as appropriate, and track it through resolution consistent with national guidance; or 2) obtain additional information through Federal investigation or a show cause letter if necessary, and take Federal action as

appropriate; or 3) determine that follow-up is not necessary.

Performance Expectations

- **Guidance:** Regions should determine the number of inspections to be conducted in each of the FIFRA core program areas
Projection: Number of federal and state inspections in each core area, broken out by state. Projections will be used by Regions as the basis for negotiations with each of their state enforcement grantees; provide an explanation if no activity projected in this area.

DATA QUALITY

It is critical that the regions enter all Federal state, and tribal data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the National Compliance Data Base (NCDB). Once available, all federal, state and tribal data should be entered into the Integrated Compliance Information System (ICIS). All federal enforcement cases as well as case conclusion data sheet data should be entered into ICIS.

PROGRAM OVERSIGHT

Each region should conduct state enforcement program oversight. This can include joint end-of-year reviews with the pesticides program, joint inspections to monitor quality of field work and training opportunities to standardize the knowledge-base of state inspectors.

5. EPCRA PROGRAMS

EPCRA includes two distinct programs, Community Right-to-know under EPCRA 313 and release notification and emergency preparedness under CERCLA 103 and EPCRA 304, 311 and 312. EPA and the public rely on EPCRA for information on chemicals entering the environment, and on the storage of chemicals at facilities. EPA, state and local entities, and the community rely on the combined EPCRA/CERCLA authorities to prepare local chemical emergency response plans, and to more safely and adequately respond to chemical emergencies. EPA must ensure that companies report accurately and within required time frames.

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Monitoring

EPCRA 313

Regions are encouraged to use screening and targeting tools to focus limited Federal resources on national and regional priority areas. A general area of emphasis is to target facilities that meet reporting criteria but have not reported.

Performance Expectations

- **Target:** In the EPCRA 313 program, regions are expected to conduct at least 8 on-site Data Quality inspections each fiscal year as part of their overall inspection commitment. **Projection Commitment:** Number of data quality inspections; provide an explanation if below the target level.
- **Target:** In the EPCRA 313 program, regions are expected to conduct at least 20 inspections each fiscal year as part of their overall inspection commitment. **Projection Commitment:** Number of inspections; provide an explanation if below the target level.

EPCRA 304/311/312 CERCLA 103

Regions are encouraged to use screening and targeting tools to focus limited Federal resources on national and regional priority areas. A general area of emphasis is to target facilities that meet reporting criteria but have not reported. In light of continuing concerns regarding chemical safety, Regions should also consider the presence of significant quantities of chemicals of concern and proximity to population centers in focusing their targeting and inspections efforts.

Enforcement

EPCRA 313; EPCRA 304/311/312 CERCLA 103

Regions may be asked to participate in enforcement case initiatives or cluster filings. These tools are used to further focus effort and resources. In all circumstances, cases filed as part of an initiative or cluster filing count as part of the annual workplan commitment, not as an add-on. OECA will remain sensitive to regional priorities when identifying initiatives or cluster filings. Regions will work with OECA to identify candidate issues, industries or sectors for enforcement case initiatives. OECA will use national meetings and conference calls as the means for selecting issues, industries or sectors for Federal enforcement initiatives.

DATA QUALITY

EPCRA 313; EPCRA 304/311/312 CERCLA 103

Each region is responsible for timely entry of inspection and case information into FIFRA/TSCA Tracking System (FTTS) and ICIS. We anticipate that FTTS will be merged into ICIS in FY 2005.

6. TSCA

The Agency's core TSCA program consists of three major elements: PCB's, Asbestos, and Lead-based Paint. The lead paint program will focus on fully developing and implementing an integrated strategy which will include the 1018 program with HUD, and working with the regions and states to implement the 402 and 406 rules. The integrated strategy will employ a broad range of new compliance and enforcement approaches to reduce lead-poisoning in children. The enforcement scheme (and resources) should focus primarily on Disclosure Rule (1018) violations, and secondarily on Section 402 and/or 406 violations in non-authorized States. Enforcement of Sections 402 and 406 should be coordinated with appropriate oversight of authorized State 402 and 406 programs. Likewise, the lead program will work to broaden the State Tribal Assistance Grant (STAG) program to fund a full range of compliance and enforcement.

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

Compliance assistance will be the main focus of OECA activity for the TSCA AHERA program in FY 2005-2007. The EPA-supported Schools Compliance Assistance Center will be the primary vehicle for providing compliance assistance, with regions participating where resources permit. In addition, as part of the integrated strategy, the lead paint program will continue its work with the regulated community to provide compliance assistance at appropriate opportunities such as home shows, meetings, and discussions with landlord associations. Inspectors will provide compliance assistance at inspections which will cover all aspects of the lead paint program.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

As part of the integrated strategy, the lead paint program will continue its work with the regulated community to look for ways to achieve abatement on a voluntary basis, and as part of negotiated settlements to enforcement actions.

As part of the Agency's Persistent Bio-accumulative Toxics (PBTs) program, OECA will continue to work with Regions to further decommission PCB-laden equipment. Federal compliance incentives programs will be initiated, as appropriate. Regions are encouraged to work with OECA when developing their own compliance incentive programs based on regional needs and priorities.

Regions should review and follow-up on, as appropriate, disclosures submitted under the OECA Audit Policy and Small Business Policy. Under Core TSCA, self disclosures received by minimally-invested regions may be forwarded to OECA for appropriate action.

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Core TSCA

Regions are expected to track and prioritize tips and complaints, and follow-up, as needed. Regions are also expected to follow-up on all referrals received from Headquarters and states. Follow-up includes evaluating the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through Federal investigation, show cause letter, subpoena if necessary and issue appropriate Federal action as appropriate; or 3) determine that follow-up is not necessary. Minimally-invested regions are to refer tips and complaints to the Core TSCA Enforcement Center for follow-up. Those regions who chose to maintain a minimal presence in this program are expected to respond to questions from the regulated community, to conduct limited inspections as resources allow, and to work with the Bureau of Customs and Border Protection on the import/export program. For those regions (other than 2 and 5) who chose to continue to invest additional resources in Core TSCA compliance and enforcement, the Core TSCA Enforcement Center will assist in targeting inspections, but the Region is expected to provide legal and technical enforcement case support. Regions should ensure inspection coverage, as applicable, in States without EPA enforcement cooperative agreements.

Performance Expectations

- **Guidance:** Project the number of Core TSCA Inspections (sections 4, 5, 8, 12 and 13)
Projection: Number of federal inspections; provide an explanation if no activity projected in this area.
- **Guidance:** In States without authorized Section 402 programs, Regions should conduct targeted Section 402 inspections of training providers and inspect work sites; this activity should be briefly described in the work plan submission as rationale for any trade-offs with Disclosure Rule or Section 406 inspection commitments.
Projection: Number of federal inspections; provide an explanation if no activity projected in this area.
- **Performance Benchmark:** Follow-up, as appropriate, 100% of citizen complaints.
Exception: Provide an explanation if the region will not meet the benchmark.

PCBs

In FY 2005-2007, the Regions should use their enforcement resources to focus on the continued phase out of PCBs as well as monitoring PCB storage and disposal facilities. As appropriate, regional PCB personnel should coordinate with waste program personnel to ensure that the transfer of Brownfield properties are in compliance with PCB rules, guidance and policies. Using the Transformer Registration information, Regions should target inspections toward users of high concentration PCBs and non-reporters. Enforcement follow-up to violations detected as a part of these inspections should promote, where possible, the retirement of PCB

transformers through Supplemental Environmental Projects (SEPs). Tips and complaints should be followed-up as appropriate.

Performance Expectations

During FY 2005-2007, Regions should inspect each PCB commercial storage and disposal facility in their Region at least once so that a baseline of enforcement activity at these sites can be established.

- **Target:** Inspect 33% of the PCB commercial storage and disposal facility universe
Commitment: Number of inspections and percent of universe (also provide universe size); provide an explanation if below the target level.

AHERA (asbestos)

For the TSCA asbestos program, where EPA is the lead for inspection and enforcement, resources should be targeted at:

- Charter schools
- Large Local Education Authorities (LEA) School districts, and
- LEAs that had settlement agreements or were asked to certify “compliance”

In non-waiver states with grants, the Regions will follow-up on violations referred by the states, and develop appropriate enforcement responses. Where applicable, the Regions should encourage states to apply for the “waiver” program.

Performance Expectations

- **Target:** Conduct inspections at 5% of the school universe or 20 inspections, which ever is less each year.
Commitment: Number of inspections, and percent of the total universe; provide an explanation if below the target level. (Identify the number of Charter schools in each Region.)
- **Target:** Conduct inspections at 5 large LEAs (randomly select 5 individual schools from each LEA for evaluation) each year. Identify large LEAs located in the Region using a National list of the 100 largest LEAs
Commitment: Number of inspections; provide an explanation if below the target level.
- **Target:** Review past settlement agreements from 1991-1998, and conduct follow-up inspections at 5% or 10 LEAs, which ever is less, each year.
Commitment: Number of inspections and percent of LEAs covered; provide an explanation if below the target level.

Lead Program

Regions should screen tips and complaints for potential violations of the Lead Disclosure Rule, as well as the Section 402 Abatement, Training and Certification Rule and Section 406 Renovator and Remodeler Rule in States without authorized programs. Each tip or complaint should be reviewed carefully to determine whether follow-up is necessary and, if so, the level of follow-up. In many cases, a follow-up letter to the violator will be the appropriate response to a tip or complaint. After screening the response for indicators of actual or potential risk, the Region should determine whether an on-site investigation or more resource-intensive level of compliance monitoring is appropriate.

Regions should continue to explore innovative ways to implement an integrated lead paint strategy. This will include methods to better target compliance activities, partner with state and local health care providers, identify “hot spots,” identify and baseline universe of lead poisonings, and other similar activities to reduce the number of lead poisoned children.

Performance Expectation

- **Guidance:** Regions should determine the appropriate number of Pb 1018, and 402/404 and 406 inspections in non-authorized states.
Projection: Number of federal inspections; provide an explanation if no activity projected in this area.

DATA QUALITY

It is critical that regions enter all Federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the TSCA, FIFRA, & EPCRA 313 National Compliance Data Base (NCDB). It is important for timely data entry to occur for purposes of national analysis and publication of data as appropriate. OECA will track data entry and will discuss any data issues with regional management. Administrative penalty cases and Audit Policy cases should also be entered into ICIS.

7. AIR PROGRAM

The regional Clean Air Act (CAA) compliance and enforcement program focuses primarily on the following areas: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Maximum Achievable Control Technology (MACT), Prevention of Significant Deterioration/New Source Review (PSD/NSR), Title V Operating Permits, Stratospheric Ozone Protection, and Section 112(r) Risk Management Plans (RMPs).

The Regions should continue to maintain a minimum level of activity consistent with the resources available for implementing the core program; the level and quality of effort by the delegated agencies; and region-specific considerations that may require greater EPA involvement. In designing these programs, the regions should take into consideration all aspects of the program (e.g., compliance evaluations, applicability determinations, assistance, incentives, enforcement), and focus on those activities that will yield the greatest benefit, and are not duplicative of efforts by delegated agencies. Regardless, the Regions, should provide sufficient oversight to ensure that delegated programs are being implemented consistent with the delegation agreements.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

NSPS/NESHAP/MACT Programs:

Compliance evaluations should be conducted at Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80% of the Title V major source threshold (80% synthetic minors) consistent with the Compliance Monitoring Strategy (CMS) policy, and the biannual plans developed by the delegated agencies. Emphasis should be placed on ensuring that delegated agencies: provide and maintain an accurate universe of sources subject to the policy; develop facility-specific CMS plans; maintain records of their compliance monitoring activities; and report all Minimum Data Requirements (MDRs) in a timely manner consistent with the underlying Agency policies and Air Facility Subsystem (AFS). Once an evaluation is completed and a compliance determination is made, all evaluations should be reported as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the Regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once. Regions should work with delegated agencies to ensure that they are familiar with CMS, and implement their programs consistent with the guidance.

Separate from investigations associated with the PSD/NSR Priority and discussed in the section on National Priority Activities, Regions should continue any on-going investigations, and

initiate new ones as appropriate. These activities should be reported in AFS.

During the FY 2005-2007 time frame, special emphasis should be placed on implementing the National Stack Testing Guidance. It was developed in response to a report by the Office of the Inspector General (OIG) which criticized the Agency for not issuing national guidance on stack testing, or providing sufficient oversight of state and local stack testing programs. The OIG concluded that this lack of guidance and oversight had an adverse effect on the use of stack testing as a tool in determining compliance.

In partial response to the concerns raised in the OIG report, the CMS Policy addressed the issues of testing frequencies and the reporting of test results. Consistent with this policy, regions, and delegated agencies should report all stack tests and the results in AFS. The Stack Testing Guidance addresses the remaining issues raised by the OIG, and thus focuses on those issues associated with the conduct of stack tests and the interpretation of the test results. For example, it addresses issues such as the time frames for conducting stack tests, the issuance of waivers, notification requirements, observation of tests, representative performance, and stoppages and postponements of tests.

During the first year of implementation, this guidance will be treated as interim guidance to provide the Office of Compliance and the Regions with an opportunity to evaluate its usage and monitor any potential problems that may arise as individual states apply the provisions. Regions should ensure that delegated agencies are familiar with the Stack Testing Guidance, and implement their programs consistent with the guidance.

Performance Expectations:

- Regions should provide projections for: (1) the number of Full Compliance Evaluations (FCEs) at Title V majors, 80% synthetic minors, and other sources (as appropriate) by region and state; (2) the number of regional Partial Compliance Evaluations (PCEs); and (3) the number of negotiated state PCEs.
Target: The default in CMS is 50% of the universe for majors, and 20% of the universe for 80% synthetic minors. However, this may vary from state-to-state depending on what is negotiated under CMS.
Commitment: (1) the number of FCEs at Title V majors, 80% synthetic minors, and other sources by region and state, (2) the number of PCEs by region and state, and (3) the number of negotiated state PCEs.; provide an explanation if below the target level.
- **Performance Benchmark:** 100% of Regional FCEs shall include CFC evaluations (CFC Evaluations are reported to AFS as PCEs).
Exception: Provide an explanation if the region will not meet the benchmark.
- **Target:** Regions should negotiate facility-specific CMS plans with 100% of delegated agencies, periodically evaluate progress, and work with delegated agencies to revise the plans as necessary.

Commitment: Number of CMS plans negotiated, and percent of delegated agency universe covered; provide an explanation if below the target level.

- **Guidance:** Regions should project the number of AFS investigations to be conducted, and identify the targeted air program (e.g., MACT, NSPS).
Projection: Number of investigations broken out by air program; provide an explanation if no activity projected in this area.
- Regions should utilize and encourage delegated agencies to use stack tests as a means of determining compliance. There is no target for the number of stack tests to be conducted.
Performance Benchmark: Regions and delegated agencies should report 100% stack tests and the results (pass/fail) in AFS when a compliance determination has been made.
Exception: Provide an explanation if the region will not meet the benchmark.

Title V Operating Permits Program:

Regions should continue to review Title V permits, both new ones as well as renewals, to ensure that they have adequate monitoring provisions consistent with the statute, underlying regulations, agency policies and judicial decisions. Pursuant to CMS, regions also should review all Title V compliance certifications and periodic reports when conducting an FCE. Regardless of whether an FCE is being conducted, compliance certifications should be reviewed annually, compared to the compliance status reported in AFS, and adjustments made accordingly. Regions should work with delegated agencies to ensure full coverage of all certifications. In addition, all MDRs associated with the Operating Permit Program should be entered in a timely manner in AFS. Regions should work with delegated agencies to ensure that they are familiar with CMS, and implement their programs consistent with the guidance.

Performance Expectations:

Regions should review and comment as appropriate to the permitting authority on the compliance and enforcement provisions of a subset of the initial Title V permit applications they receive each year, as well as renewals. Regions should ensure sources subject to a pending or current CAA enforcement action or investigation are not shielded by the Title V permit, and that the draft Title V permit includes appropriate placeholder language for the applicable requirements at any affected units. Further, Regions should ensure that the draft Title V permit includes a compliance schedule addressing Consent Decree requirements.

- **Performance Benchmark:** Regions should review and comment on the compliance and enforcement provisions of at least 5% of new Title V permit applications, and 5% of permit renewals.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Review 50% of Title V annual certifications

Exception: Provide and explanation if the region will not meet the benchmark.

- **Performance Benchmark:** Report the results of 100% of certification reviews consistent with CMS and the MDRs identified for the program (i.e., date due, date received, deviations, date reviewed, compliance status for reporting period). for reporting.
Exception: Provide and explanation if the region will not meet the benchmark.

Stratospheric Ozone Protection:

Consistent with CMS, all regional FCE's at major sources and 80% synthetic minors should include an evaluation of compliance with regulations promulgated to protect the stratospheric ozone layer if such regulations apply. When CFCs or other ozone depleting substances (ODS) are known or suspected to be present at a facility of concern, available regional resources also may be used to conduct PCEs at these facilities. The Regions are reminded that this program is not delegable to state or local agencies, or tribes. Nevertheless, some states, locals or tribes may have promulgated similar requirements, and thus should be evaluating compliance with their own requirements.

Performance Expectations:

- **Performance Benchmark:** Regions should include evaluations of CFCs and other ODS as part of routine FCEs at all facilities where the regulations apply.
Exception: Provide and explanation if the region will not meet the benchmark.

Section 112(r) Risk Management Plans (RMPs)

Although section 112(r) is a Clean Air Act authority, responsibility for enforcement and implementation of section 112(r) varies from Region to Region, and may not reside with the Regional division responsible for air compliance and enforcement.

Performance Expectation:

- **Guidance:** Regions should project the number of Risk Management Plans, Section 68.220 Audits, and General Duty Clause Inspections.
Projection: Number of inspections broken out by type; provide an explanation if no activity projected in this area.

Past compliance and enforcement efforts in section 112(r) have focused on ensuring that regulated sources have submitted the required Risk Management Plans. Regions are currently shifting efforts towards ensuring that submitted plans are adequate and meet the regulatory requirements. Headquarters will continue to provide support in this area. In light of continuing concerns regarding public safety, Regions should also consider the following factors in focusing their compliance monitoring efforts:

- significant quantities of chemicals of concern in a process;

- proximity to population centers of facilities that have significant quantities of chemicals of concern.

During FY 2005 Headquarters will establish a workgroup to revise the section 112(r) enforcement response policy. This policy, released in August 2001, will be modified to include examples of enforcement cases Regions have taken, and will provide more concrete guidance for appropriate enforcement responses based on these examples. Regions can utilize the expedited settlement policy, issued January 4, 2005, which allows them to obtain compliance while conserving enforcement resources.

Finally, during FY 2005 Headquarters will continue discussions with Regions on future directions for the program. This discussion will include possible targeting strategies for identifying classes of sources which may warrant further investigation, and potential revisions to the section 112(r) penalty policy.

Enforcement

Federal enforcement will be considered where delegated agencies fail to take appropriate action. In addition, Regions should take appropriate Federal Enforcement actions in situations where Federal involvement could be particularly helpful in bringing the matter to a successful and environmentally beneficial resolution (e.g., a company with violations in more than one state, transboundary issues, particularly recalcitrant violators, etc.), or is essential to ensure fair and equal environmental protection mandated by law.

For all cases newly listed in accordance with the “Policy on Timely and Appropriate Enforcement Response to High Priority Violations (HPVs),” Regions should adhere to the requirements of the Policy, and ensure that all MDRs are reported in AFS in a timely manner. Regions should work with delegated agencies to ensure that they are familiar with the HPV Policy, and implement their programs consistent with the guidance.

Performance Expectations:

- **Performance Benchmark:** Regions should evaluate and bring to closure 100% of any self-disclosures received consistent with the national policy.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Federal Case Backlog - Regions should settle or litigate cases issued in years prior to FY 2005 and ensure investigation and issuance of appropriate action for any open tips, complaints, or referrals received by EPA, and work with the Department of Justice and EPA Headquarters as appropriate to develop, file, prosecute, and/or settle outstanding judicial and administrative actions.
Exception: Provide and explanation if the region will not meet the benchmark.

- **Performance Benchmark:** Regions should exercise EPA's 1997 clarified penalty authority against Federal agencies for CAA violations in appropriate circumstances.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions should report 100% of MDRs accurately, and in a timely manner in AFS consistent with the HPV Policy, and ensure that delegated agencies do the same.
Exception: Provide and explanation if the region will not meet the benchmark.

DATA QUALITY

Data is an integral part of the CAA compliance and enforcement program; therefore, it is essential that Regions and delegated agencies enter complete and accurate information into the national data base in a timely manner. Complete, accurate and timely data is necessary for EPA, delegated agencies and the public to evaluate programs and institute corrections. For a complete list of MDRs for the program, please consult CMS, the HPV Policy, and the Information Collection Request (ICR) for the program. A summary of the requirements can be found at the following website: www.wpa.gov/ttn/AFS/afs/memos/mdr.html.

As stated previously, once an evaluation is completed and a compliance determination is made, all evaluations should be reported as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the Regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once. Regions should work with delegated agencies to ensure that they are familiar with the data aspects of CMS, the HPV Policy, and the ICR, and implement their programs consistent with them. Agreements with delegated agencies to provide complete, accurate and timely data should be incorporated in documents such as State Enforcement Agreements (SEAs), Performance Partnership Agreements (PPAs) or Section 105 grant agreements.

Regions should ensure that all necessary compliance data is provided for the Inspection Conclusion Data Sheet (ICDS), and reported either manually or through the Integrated Compliance Information System (ICIS).

In addition, Regions should ensure that all necessary enforcement data is reported in ICIS as appropriate.

Performance expectations:

- **Performance Benchmark:** Regions should report the results of 100% of FCEs and PCEs as soon as practicable, and if feasible, in the next regularly scheduled update of AFS after an evaluation is completed and a compliance determination is made. Regions also should ensure that delegated agencies report the results of all FCEs and negotiated PCEs (as appropriate) in the same manner.

Exception: Provide and explanation if the region will not meet the benchmark.

- **Performance Benchmark:** Regions should ensure that delegated agencies have written agreements to provide complete, accurate, and timely data consistent with the Agency policies and ICR.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 100% of AFS investigations initiated and completed should be reported into AFS and contain pass/fail results.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions and delegated agencies should enter all MDRs in AFS consistent with the Agency policies and the ICR. If for some reason a delegated agency does not agree to enter the MDRs, the Region is responsible for ensuring that the data is entered into AFS in a timely manner.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** All relevant ICDS information should be completed and reported for any regional FCEs or PCEs. First-line supervisors should review the ICDS forms prior to the mid-year and end-of-year reports to verify completeness and accuracy.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** All enforcement case initiations and conclusions, including the case conclusion data sheet, should be entered into ICIS.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 100% of Title V Annual Certifications received should report a due date.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 50% of Title V Annual Certifications received should be reviewed.
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 100% of Title V Annual Certifications reviewed should report MDR requirements (Deviations and Compliance Status for reporting period).
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 100% of Title V Annual Certifications Due/Received should report MDR requirements (Date Due, Date Received, Deviations, Compliance Status for reporting period).
Exception: Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 100% of Major Sources have a CMS category and frequency

code.

Exception: Provide an explanation if the region will not meet the benchmark.

- **Performance Benchmark:** Regions should enter all section 112(r) information directly into ICIS during FY 2005-2007.

Exception: Provide an explanation if the region will not meet the benchmark.

PROGRAM OVERSIGHT

Regions should assess annually the performance of compliance monitoring programs and enforcement activities against the negotiated and agreed upon work plans to ensure that commitments are met. In addition, Regions should conduct more in-depth analyses of the overall programs periodically to ensure that resources are being utilized as efficiently and effectively as possible. These analyses should address issues such as whether adequate inspector training is available; targeting strategies are being utilized to focus on environmentally significant sources; written procedures and guidelines are consistent with Agency policy and are available to guide activities; adequate QA/QC programs are in place; quality evaluations that meet the definition of an FCE are being conducted; violations are being identified and appropriate enforcement action is being taken; HPVs are being identified and tracked; appropriate penalties are being assessed; and data are accurately reported in a timely manner. These evaluations should assess trends; recognize successes as well as document areas for improvement; and provide concrete recommendations for improvement. Evaluations should be based on activities such as monthly conference calls; quarterly and annual reviews; file audits; oversight inspections; and management and staff interviews. For further guidance in this area, please see CMS and the HPV Policy. Also, please see the sections on EPA-State Relations and Cross-Program Core Activities.

Performance Expectations:

- **Target:** Review all delegated programs to determine whether compliance monitoring and enforcement commitments were met, and if not, why not; evaluate how these commitments compare to previous years.
Commitment: Number and percent of delegated programs reviewed; provide an explanation if below the target level.
- **Target:** Regions should conduct at least one in-depth evaluation of a delegated program, consistent with CMS.
Commitment: Identify the delegated program(s) to be evaluated; provide an explanation if below the target level.

Watch List

Regions are expected to implement the Watch List project for the CAA program. The

following data reported into AFS will be used to measure regional/state performance:

- Number of HPVs and percentage of universe;
- Number and percentage of universe addressed and resolved in a timely and appropriate manner;
- Number of Watch List facilities per region and state.

8. RCRA HAZARDOUS WASTE PROGRAM

RCRA Core Program

EPA is committed to ensuring that hazardous waste is managed in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment.

The goal of state and Federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, Federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. Regions should refer to the Federal facilities section of this attachment (Section 10) for guidance on including Federal facilities in core program activities where applicable.

Core Program Elements

- Federal facilities under SWDA§3007(c), and as incorporated by the FFCA
- State and local facilities identified under SWDA § 3007(d)
- Treatment, Storage and Land Disposal facilities under SWDA §3007(e)
 - maintaining records of all hazardous waste which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;
 - treatment, storage, or disposal of all such waste received by the facility pursuant to operating methods, techniques, and practices in accordance with the law
 - establishing contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable
 - compliance with requirements for design, construction, and permitting of such hazardous waste treatment, disposal, or storage facilities;

RCRA Underground Storage Tank Program

EPA is committed to ensuring that underground storage tanks (USTs) are operated in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. Regions should maintain an enforcement presence concerning leak

prevention, leak detection, corrective action and closure, and financial responsibility violations⁶. Owners and operators that do not meet UST requirements are not only in violation of Federal and state laws but also have USTs that present a threat of release (or have had a release requiring corrective action). These non-compliant USTs are gaining an economic advantage over competitors that are in compliance with environmental laws. These efforts will ensure that RCRA Subtitle I-regulated facilities properly prevent and detect releases and take appropriate corrective action when releases occur.

The goal of state and Federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, Federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. Regions should refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

RCRA Core Program

Compliance assistance activities should focus on newly regulated handlers, handlers subject to new regulations, small businesses in the priority industrial sectors and other small businesses with compliance problems.

RCRA Underground Storage Tank Program

Investments in outreach and assistance should be strategically focused (e.g., facilities on tribal lands, small businesses with compliance problems).

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

RCRA Core Program

The RCRA core program includes the compliance monitoring activities set forth in Tables I and II below. Both state and Federal compliance monitoring activities may be required in implementing the activities in Table I (e.g., maintaining the annual level of generator inspections). To facilitate accomplishment of Agency FY 2005 priority activities, achievement of the level playing field principle and oversight of state compliance assurance and monitoring activities, Regions should maintain a Federal presence in the core program, conducting the compliance monitoring activities set forth in Table II. Additionally, Regions and States (where

⁶Regions should focus financial responsibility compliance monitoring activities in states that do not have a state fund.

appropriate) will implement activities associated with the statistically valid non-compliance rate project (i.e., at foundries). In light of continuing concerns regarding public safety, Regions should also consider the following factors in focusing their compliance monitoring efforts:

- ▶ facilities that generate, treat, store, or dispose of significant quantities of hazardous wastes that pose a threat to public safety
 - ▶ proximity of facilities that generate, treat, store or dispose of hazardous wastes to population centers
- The regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such a deviation is warranted.

Performance Expectations

The states and EPA regions should work together to determine the appropriate mix of Federal and state compliance monitoring activities to meet core program activities. In making its determinations, each Region should examine the compliance status within its geographic purview.

Tables I and II below provide options that may be considered in determining inspection expectations. In considering these options, it is important to note that the list of options does not represent all options that may be available, and that the options are subject to change based on further Regional input.

Table I - Combined State and Federal Core Activities

Statutory mandated inspections ⁷	<p><u>Inspect ANNUALLY</u>: 1) Federal facilities under SWDA§3007(c), and as amended by the FFCA; 2) State and local facilities identified under SWDA § 3007(d) Target: 100% of universe. Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p> <p><u>Inspect ONCE EVERY TWO YEARS</u>: Treatment, storage and disposal facilities under SWDA §3007(e) Target: 50% of universe. Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p> <p><u>Inspect ONCE EVERY THREE YEARS</u>⁸: Land disposal facilities under SWDA §3007(e) Target: 33% of universe. Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p>
Generators (LQGs)	<p>Target: Annually inspect 20% of the large quantity generator universe.⁹ Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p>
Generators (SQGs)	<p>Guidance: Regions identify an appropriate % of SQGs to be inspected annually¹⁰. Projection: Regional and state inspection commitments broken out by state; provide an explanation if no activity projected in this area.</p>

Note: Regions should include RCRA Section 6002 inspections in conjunction with inspections of Federal facilities in accordance with Executive Order 13101 and Federal Facilities Enforcement Office (FFEO) guidance. This applies to activities in both Table I and II. Results should be reported to FFEO.

⁷Targets may be modified in Regions work with states/tribes to identify other facilities that pose a risk to human health or the environment.

⁸Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility's ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring systems; and actual or suspected changes in local ground water regimes.

⁹Possible options depending on size of the universe: a) inspect 20% universe, b) inspect 100% of universe if less than 100 facilities, c) inspect LQG's not inspected in the last three years, or d) inspect LQGs every five years.

¹⁰States and regions should determine the appropriate levels. Possible options depending on size of the universe: a) inspect 20% of universe, b) inspect all facilities if universe is less than 100 facilities, or c) inspect SQGs not inspected in the last ten years.

Table II - Federal Core Activities

Facilities/Units that are not Part of an Authorized State Program ¹¹	<p><u>Inspect ANNUALLY</u>: 1) Federal facilities under SWDA§3007(c), and as incorporated by the FFCA; and 2) State and local facilities identified under SWDA § 3007(d) Target: 100% of universe. Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p> <p><u>Inspect ONCE EVERY TWO YEARS</u>: Treatment, storage and disposal facilities under SWDA §3007(e) Target: 50% of universe. Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p> <p><u>Inspect ONCE EVERY THREE YEARS</u>¹²: Land disposal facilities under SWDA §3007(e) (At the region's discretion, the region may enter into an agreement with an unauthorized state under which the state would do some of these inspections under their state law) Target: 33% of universe. Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.</p>
Generator (LQGs)	<p>Target: Annually inspect at least 6 generators per state¹³. (The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.) Commitment: Number of generator inspections by state; provide an explanation if below the target level.</p>

¹¹ Ibid, page

¹² Ibid, page

¹³ Possible options depending on size of the universe: a) inspect 5% of the universe, b) inspect 100% of universe if less than 50 facilities, or c) inspect LQG or TSDF if not inspected in the last five years (provided state inspection is not planned).

Treatment, Storage, Disposal Facilities that are part of an Authorized State Program	<p>Target: Annually inspect at least 2 TSDFs per state¹⁴. The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues; at entities with violations in more than one state; to address financial assurance, transboundary, chemical safety (aka “homeland security”) issues; at particularly recalcitrant violators; etc.)</p> <p>Commitment: Number of TSDF inspections by state; provide an explanation if below the target level.</p>
Other Facilities	<p>Inspections supporting citizen complaint or criminal investigations; off-site policy-related inspections; corrective action inspections, oversight inspections, non-notifier-related inspections, etc.</p> <p>Target: Options depending on size of the universe: a) 5% of total universe, b) a range of facilities based on the total LQG universe, or c) 10 inspections per year in each case.</p> <p>Commitment: Number of inspections and percent of universe covered if appropriate; provide an explanation if below the target level.</p>

RCRA Underground Storage Tank Program

Regions should work with states to assure compliance with UST requirements. EPA should continue to focus its Federal inspection resources in areas that could produce the greatest environmental and human health benefits. Generally, EPA should focus its inspection resources on leak prevention, leak detection, corrective action and closure, and financial responsibility requirements.

Possible criteria for identifying facilities to be inspected under the UST program include: a) USTs in Environmental Justice areas and/or on Tribal lands, b) any UST not inspected in the last five years, or c) USTs associated with a geographic, sector, or Environmental Initiative.

Performance Expectations

- Guidance:** Regions should project the number of UST facilities to be inspected (by the region, per state) and the number of UST facilities inspected by the Region in Indian Country and at Federal Facilities.

Projection: Number of regional UST inspections broken out by state, Indian Country, and Federal Facilities; provide an explanation if no activity projected in this area.

Enforcement

¹⁴Ibid.

RCRA Core Program

Regions should refer to the Cross-Program Core Activities section of the Introduction to the Core Program for general information regarding these activities. Regions are also asked to follow the January 2004 RCRA Enforcement Response Policy (and subsequent revisions) which includes appropriately classifying all facilities meeting the definition of a significant non-complier and taking timely and appropriate enforcement actions.

RCRA Underground Storage Tank Program

Regions should take prompt and effective action on UST violations discovered, particularly those that present an imminent and substantial threat to health and the environment. Regions should utilize the appropriate enforcement tool, taking into account the seriousness of the violations, to address any detected non-compliance with the UST requirements.

PROGRAM OVERSIGHT

RCRA Core Program

Watch List

In reviewing regional/state performance, EPA will consider the following data that is currently reported into RCRAInfo:

- number of SNC's identified (and percent of universe);
- number (and percent of universe) addressed and resolved in a timely and appropriate manner;
- number of Watch List facilities per region/state
- SNC's identified per 100 inspections of TSD/LQG facilities;
- New SNC's identified as a percent of TSD/LQG universes

DATA QUALITY

RCRA Core Program

Federal and state enforcement personnel are required to report into RCRAInfo and ICIS the essential data elements to accurately reflect program activities and measure RCRA program performance.

Regions should enter their compliance assistance activities in ICIS; however, if the region conducts on-site compliance assistance they can instead record them in RCRAINFO. States are not able at this time to enter their compliance assistance into ICIS so they should continue to use RCRAINFO. Headquarters will generate RCRA compliance assistance numbers for Federal activities out of both ICIS and RCRAINFO.

100% of all EPA-led inspections must report results on the Inspection Conclusion Data Sheet (ICDS).

RCRA Underground Storage Tank Program

For 2005-2007, all UST inspections and enforcement activity should be entered into ICIS. Inspection Conclusion Data Sheet (ICDS) forms should be completed for all federal inspections, including UST Expedited Settlements¹⁵ and Case Conclusion Data Sheets (CCDS) should be completed for all federal UST cases.

¹⁵Expedited Settlements include UST field citations.

9. FEDERAL ACTIVITIES PROGRAM

The Federal activities core program for FY 2005-2007 is built around the following major areas:

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (Sub-objective 5.2.1)

Performance Expectations

- All regions should fulfill Agency obligations under Section 309 of the Clean Air Act, the NEPA, and related laws, directives and Executive Orders.
- All regions should target high impact federal program areas (e.g., transportation and energy projects) to promote cooperation and innovation towards a more streamlined environmental review process.

International

Performance Expectations

- Improve environmental performance and cooperation with Goal 6 of the U.S./Mexico Border 2012 plan (Regions VI and IX).
- Enhance enforcement, compliance and capacity building efforts with Mexico and Canada relating to trans-boundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Improve performance of joint responsibilities along the border and points of entry into the United States by working with the Bureau of Customs and Border Protection (all Regions).
- Fulfill International agreements and the Agency's RCRA obligations regarding notification of trans-boundary movement of hazardous waste (all Regions).

Ensure Federal Actions are Consistent with Goals

NEPA / CAA §309 Review: Carry out EPA's responsibilities to review and comment on all major proposed federal actions to ensure that significant adverse effects are identified and are either eliminated or mitigated.

NEPA Compliance and "Cross-cutters": Carry out EPA's responsibilities to comply with NEPA and "cross-cutters" (e.g., Endangered Species Act, National Historic Preservation Act, Executive Orders on wetlands, flood plains, and farmland).

Prepare environmental assessments (EISs or EAs) for EPA-issued new source National Pollutant Discharge Elimination System (NPDES) permits where a state/tribe has not assumed

the NPDES program; off-shore oil and gas sources; EPA laboratories and facilities; and Clean Water Act wastewater treatment plant grants.

Prepare environmental assessments (EISs or EAs) for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance programs) for wastewater, water supply and solid waste collection facilities; Border Environment Infrastructure Fund for the US/Mexico Border Environment Cooperation Commission projects; and reviews conducted under the "voluntary NEPA policy."

Enforcement and Compliance with Other Countries

International Enforcement Capacity Building: The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with the La Paz Agreement. Regions VI and IX will continue the implementation of U.S.-Mexico work plans for enforcement and compliance cooperation in the border region and work with the Bureau of Customs and Border Protection to improve performance of joint responsibilities along the border.

Import/Export Program: All regions will review the permit and compliance status of U.S. receiving facilities in connection with the notifications for the import of hazardous waste they receive from HQ EPA and, based on their review, recommend consent or objection to notifications within the time periods allowed under applicable international agreements. Headquarters will process notifications for import and export of hazardous waste to ensure compliance with domestic regulations and international agreements; consent or object to import notifications and acknowledge consent/objection to export notifications; track the flow of hazardous waste both in and out of the United States based on manifests received from the Bureau of Customs and Border Protection; and conduct compliance monitoring and prepare memoranda of referral for appropriate enforcement action.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Performance Expectations

- **Performance Benchmark:** Regions will report to the International Compliance Assurance Division all assistance provided to the Bureau of Customs and Border Protection regarding any point of entry into the United States.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions will review and recommend consent or objection for 100% of the notifications of intent to import hazardous waste within the time periods prescribed under applicable international agreements.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions will take appropriate enforcement action against

apparent violations of law relating to trans-boundary movements of hazardous waste identified in the memoranda of referral.

Exception: Provide an explanation if the region will not meet the benchmark.

10. FEDERAL FACILITIES ENFORCEMENT AND COMPLIANCE PROGRAM

Background

The draft FY 2005-2007 activities outlined below were developed to advance activities outlined in the National Federal Facilities 2004 Program Agenda developed by the Federal Facilities Enforcement Office (FFEO) and the Regions. The 2004 Program Agenda was developed to guide and focus EPA's overall Federal facilities enforcement and compliance activities. The FY 2005-2007 activities outlined below are an outgrowth of the 2004 Program Agenda.

FFEO is interested in Regional comments on all of the following items. In particular, FFEO is interested in quantifying commitments to expeditiously following up on violations at Federal facilities. Additionally, FFEO may consider reducing the number of items which Regional commitments are sought so comments on which commitments to retain and which to eliminate are encouraged.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

Integrated Strategies

Integrated strategies include activities focused on (i) preventing pollution and fostering long-term stewardship, (ii) assisting facilities to achieve and maintain compliance, (iii) inspecting and monitoring compliance, and (iv) prosecuting enforcement actions to correct and deter non-compliance. Examples of such activities include Environmental Management Reviews (EMRs), compliance assistance seminars or workshops, inspections, or active participation on an integrated strategy working group.

Each region will perform at least 1 activity that supports one or more Federal facilities integrated strategies (such as the EPA-VHA integrated strategy or strategies focused on Federal facilities developed under one or more national priorities). This must be coordinated with FFEO.

Compliance Assistance Seminars

Each region will complete at least one compliance assistance seminar that should include discussions of environmental management system (EMS) implementation (EMSs are required under Executive Order (EO) 13148) and toxic chemical use and release reductions (reductions required by EO 13148). As an alternative to this commitment, if in the future FFEO can establish a baseline and a consistent calculation, FFEO may consider requiring an annual percentage increase (such as 5% more than the prior year) of environmental benefits at Federal facilities, such as estimated pounds of pollutants reduced or behavioral changes, resulting from compliance assistance activities.

Performance Expectations

- **Target:** Participate in at least one activity or a working group that supports one or more Federal Facilities integrated strategies.
Commitment: Number of integrated strategy activities or workgroups the region will participate in; provide an explanation if below the target level.
- **Target:** Each Region will conduct at least one compliance assistance seminar.
Commitment: Number of compliance assistance seminars to be held; provide an explanation if below the target level.
- **Target:** Each Region will perform three Environmental Management Reviews (EMRs) at Federal facilities.
Commitment: Number of EMRs to be performed; provide an explanation if below the target level.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

Performance Expectations

- *Multi-media inspections*
Target: Each Region will conduct two multi-media inspections, selected through targeting criteria developed by FFEO and the Regions. Region may substitute four single media inspections in lieu of one multi-media inspection.
Commitment: Number of multi-media inspections, or single media inspections to be conducted; provide an explanation if below the target level.
- *Annual inspections of Federal RCRA treatment, storage or disposal facilities is required by RCRA Sec. 3007(c)*
Target: Conduct inspections at 20% of regions's universe of Federal RCRA treatment, storage or disposal facilities, or arrange with a delegated state agency to conduct such inspections.
Commitment: Number of inspections to be conducted (identify Region and state inspections), and percent of RCRA universe this represents; provide an explanation if below the target level.

NOTE: These RCRA inspections, if done by the Region, can qualify as part of a multi-media inspection or as one of the four single media inspections. (See Multi-media inspections above)

- *Single media inspections*

Target: Five single media inspections of Federal facilities (in additional to any single media inspections conducted under Multi-media inspections above).

Commitment: Number of Federal facility inspections to be conducted (in additional to any single media inspections conducted under Multi-media inspections above); provide an explanation if below the target level.

NOTE: As an alternative to this commitment, if in the future FFEO can establish a baseline and a consistent calculation, FFEO may consider requiring an annual percentage increase (such as 5%) of environmental benefits at federal facilities—such as gallons of contaminated groundwater treated, pounds of contaminated soil reduced, pounds of pollutants reduced, or number of people receiving cleaner drinking water—resulting from inspections and/or enforcement actions.

- *RCRA Section 6002 Compliance*

Performance Benchmark: EPA RCRA inspectors shall complete Sec. 6002 survey forms for 100% of EPA RCRA inspections at Federal facilities, and return the form to FFEO within two weeks of completing the inspection.

Exception: Provide an explanation if the region will not meet the benchmark.

Performance Benchmark: EPA RCRA inspectors shall give the Sec. 6002 *facility* survey to a representative at the inspected facility and request their completion of the survey and mailing to FFEO.

Exception: Provide an explanation if the region will not meet the benchmark.

Enforcement

Performance Expectations

- **Performance Benchmark:** Regions shall take appropriate follow up action by 4th quarter of FY05 for all FY 03 and FY 04 Federal facility inspections. FFEO solicits Regional suggestions on how to measure this commitment.
- **Exception:** Provide an explanation if the region will not meet the benchmark.

DATA QUALITY

Performance Expectations

- **Performance Benchmark:** For 2005-2007, all Federal facility inspections, enforcement

activities, and compliance assistance activities should be entered into ICIS, Inspection Conclusion Data Sheet (ICDS) forms should be completed for all federal facility inspections, and Case Conclusion Data Sheets (CCDS) should be completed for all federal facility enforcement cases.

Exception: Provide and explanation if the region will not meet the benchmark.

- **Performance Benchmark:** For 2005-2007, Regions shall manually report on all multi-media inspections completed at Federal facilities at the end of the year.

Exception: Provide and explanation if the region will not meet the benchmark.

11. MULTIMEDIA AND RAPID RESPONSE PROGRAM

The multimedia compliance and enforcement programs are designed to foster a comprehensive approach to the resolution of environmental problems. “Comprehensive” means that applicable provisions of all environmental laws are used to achieve broad-based environmental benefits. This approach recognizes that many facilities and companies are operating in violation of more than one environmental statute. A multimedia strategy to target and address compliance problems and environmental harm results in a more effective overall management of a facility's or a company's environmental liabilities and is ultimately more cost-effective than bringing two or more independent media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of Federal reinvention and underlie much of the Agency's enforcement reorganization.

The Agency has been, and continues to be, successful in developing cases and initiatives that have brought significant environmental results in all media. While it remains critical to be able to develop large scale, nationwide actions, we also need the capability to have a more rapid enforcement response in order to have a truly effective program. The objective of the Rapid Response Program will be to “work backwards” from finding an environmental problem to reacting with the appropriate mix of authorities, in a more direct fashion than previously. The Office of Regulatory Enforcement's (ORE) Special Litigation and Projects Division (SLPD) will work with other Divisions and with the Regions to identify cases where streamlined case development and a rapid response can produce effective results. We anticipate that these actions will be brought in both administrative and judicial forums, and that we will partner with states in appropriate cases.

In some instances, the SLPD will work with the Regions to develop the Agency's first enforcement response, with more traditional enforcement actions to follow. The cases may be streamlined, so that there will be fewer counts brought against violators in order to obtain speedy resolution, reserving our rights to bring additional actions or additional counts.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

The areas that Headquarters believes warrant compliance assistance have been identified within specific program discussions. The primary focus of the Federal multimedia program should be on compliance monitoring and enforcement. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance activities.

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program for general information regarding these activities.

Performance Expectations

With regard to compliance incentives, Regions will be expected to report on the number of voluntary disclosures received and resolved pursuant to the Audit Policy.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

The multimedia program will rely on the compliance monitoring efforts in existence for each media program. However, each region's multimedia targeting strategy and operational plan should establish protocols for coordinating multimedia investigations and actions among the individual media programs. Headquarters will continue to assist the regions in promoting a process-based approach as well as a more targeted and efficient approach to multimedia inspections in general. The goal is to achieve the best environmental result while using resources efficiently.

Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources.

Performance Expectations

Regions will be expected to continue to develop and refine their multimedia targeting strategy and operational plan for initiation of multimedia enforcement activities. Elements of this plan should include projected multimedia inspections, case development training, and projected numbers of multimedia cases. Use of a multimedia checklist is not considered to be a multimedia inspection, but a tool for identification of potential multimedia targets.

Enforcement

(a) General Approach

The multimedia or cross-statutory approach to case development can be employed in the context of three basic types of enforcement actions:

- against single facilities, where entire industrial processes at a facility are examined as a whole;
- against entire companies, where violations of different statutes that occur at various facilities indicate ineffective corporate-wide management of environmental compliance; and
- geographically-based enforcement efforts arising from a comprehensive multimedia analysis of the environmental problem(s) in a given area (enforcement activities resulting from this analysis may be single or cross-media).

(b) Rapid Response Program

Each region should support the Rapid Response Program which will place emphasis on targeted, quicker responses - in any geographic region. The enforcement model will be collaborative: the SLPD intends to work closely with and augment regional, state, and headquarters media teams. The focus will be on cooperation between SLPD, the Regions, the media enforcement programs and, where appropriate, the states working together to find and implement the most expeditious and effective response to a given situation.

While the SLPD has substantial expertise in identifying sectors for enforcement actions, it is anticipated that most new matters will derive from those closest to the sources of the problem. SLPD will rely upon contacts within the Regions and the states to identify potential areas for enforcement. In all instances, the goal will be the identification of potential harmful effects, and the coordinated, rapid resolution of problems.

DATA QUALITY

No new reporting is required. Current multimedia reporting requirements are outlined in RECAP. The Multimedia RECAP measure is the number of multimedia inspections reported by a Region. In addition, the number of multi-program and multi-facility referrals and penalty order complaints must be reported pursuant to the End of Year Enforcement and Compliance Data Reporting Guidance. Regions are similarly reminded to notify the SLPD at Headquarters of all multimedia referrals.

PROGRAM OVERSIGHT

State involvement in national multimedia and Rapid Response casework is strongly encouraged. Regions should assess the level of state-initiated compliance assistance and enforcement activity once case management teams are developed and, where practicable, encourage state participation in the National actions. Generally, although there is no oversight of state multimedia program development, the regions may encourage the development of such programs as they see fit, requesting Headquarters assistance and resources as appropriate.

12. ENVIRONMENTAL JUSTICE PROGRAM

Executive Order 12898¹⁶ directs the Environmental Protection Agency (EPA) and other federal agencies to make environmental justice a part of their mission to the greatest extent possible, by identifying and addressing adverse human health effects which have resulted from environmental problems and disproportionately affect minority and low-income populations

The mandate requires that the environmental laws implemented and enforced by EPA protect all people equally from significant environmental hazards and risks. The Agency is keenly aware that minority and/or low-income and other sensitive populations frequently confront special environmental burdens caused by a host of factors. By addressing these issues, the Agency satisfies its environmental justice obligations, thereby protecting all people, including minority and low-income populations.

On April 15, 2003, former OECA Assistant Administrator, JP Suarez outlined the Smart Enforcement approach, requiring OECA to target compliance and enforcement efforts strategically to ensure that the most significant impacts to human health and the environment are addressed first. He identified environmental justice as a cornerstone of the smart enforcement program. Subsequently, OECA's Principal Deputy Assistant Administrator, Phyllis Harris, issued a memorandum on OECA's Environmental Justice Policy¹⁷, further supporting the importance of environmental justice in program implementation. Consistent with the goals of environmental justice, OECA's application of smart enforcement concepts will result in the use of existing environmental and health data, compliance tools, and enforcement actions to address significant environmental problems and to identify problems in communities with environmental and public health concerns. OECA has already established environmental justice as a targeting factor under CWA and RCRA.¹⁸

¹⁶ "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" Executive Order, February 11, 1994

¹⁷ "OECA Environmental Justice Policy" Memorandum, January 12, 2004

¹⁸ Memorandum, FR: Assistant Administrator, "Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows," Section IV, B.2. "Priorities for SSO Enforcement Response" (April 27, 2000) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns). <<http://www.epa.gov/compliance/resources/policies/civil/cwa/strat312.pdf>>

Guidance on the Use of Section 7003 of RCRA, § II, Bullet 1 (October 1997) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns). <<http://www.epa.gov/compliance/resources/policies/cleanup/rcra/971020.pdf>>

In 2001 the EPA Environmental Justice Executive Steering Committee (a group composed of EPA Headquarters and Regional leadership) directed that each Program Office and Region should develop an Environmental Justice Action Plan. These strategic planning documents help coordinate the environmental justice activities of the Agency and establish a basis for accountability and monitoring progress. The Action Plan framework elements, which each Region has developed into specific programmatic activities, include the following:

1. *Risk Reduction / Protect Environmental and/or Public Health* - To ensure equal implementation of environmental laws to achieve significant risk reduction which will improve the environment and/or public health of affected communities.
2. *Outreach and Communication* - To provide opportunities for meaningful involvement and ensure effective communication between the Agency decisionmakers and stakeholders, including all affected communities.
3. *Training* - To provide training for EPA managers and staff to enable them to incorporate environmental justice considerations into their decisionmaking process.
4. *Federal, State, Tribal, and Local Government Coordination* - To ensure effective coordination across all levels of government to address the environmental and public health concerns of affected communities.
5. *Grants and Contracts Administration* - To promote effective and efficient management of all grants and contracts to ensure that the environmental and public health concerns of affected communities are addressed.
6. *Environmental Justice Assessment* - To conduct an assessment of the environmental justice indicators within affected communities as part of the decisionmaking process.
7. [Additional objectives can be added based on special initiatives and programs in your Headquarters or Regional Office.]

Online commitments, Regional workplan commitments, and state performance partnership agreements and grants for FY 2005-2007 should be consistent with OECA's and each Region's respective Environmental Justice Action Plan.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

When conducting focused compliance assistance activities, EPA regions and States should ensure that regulated entities within EJ communities, or impacted communities with significant minority and/or low-income populations, are recipients of EPA's compliance assistance materials and services as consistent with the goals of smart enforcement. Regions should consider how best to involve community-based organizations in compliance assistance activities. In addition, wherever possible, when producing compliance assistance materials, EPA

should make an effort to ensure that they are reproduced in the appropriate multiple languages of the impacted regulated community.

Training - Regional EJ Coordinators, the OECA Environmental Justice Advisory Council, which is chaired by the Director of the Office of Policy Planning Analysis and Communication, and the Office of Environmental Justice can be valuable sources of information to assist in the integration of environmental justice issues into Regional enforcement training programs.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

EPA inspections should appropriately target compliance monitoring activities to address issues of environmental justice, consistent with smart enforcement principles. Prior to planning and targeting inspections, among other things, it may be necessary to consider the following: (1) Will the inspection impact enforcement of all health and environmental statutes? (2) Has there been any public input regarding the area or facility? (3) Have existing health, environmental, and compliance assurance activity data sources been evaluated to ensure that facilities in disproportionately impacted areas are being targeted? (4) Have specific patterns of consumption of natural resources among minority populations and low-income populations been identified? Inspections should be targeted to diminish risk relative to the conditions and health of the resident population.

Performance Expectations

To ensure that the goals of environmental justice are accomplished, regional enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement and compliance activities. In particular, they should be consistent with existing Environmental Justice Action plans, and ensure that:

1. The public has access to compliance and enforcement documents and data, particularly to high risk communities, through multimedia data integration projects and other studies, analyses and communication and outreach activities;
2. EPA's policies, programs and activities, including public meetings, address the concerns of the potentially affected populations, including those living in minority and/or low-income areas;
3. Noncompliance is deterred and environmental and human health improvements are achieved by maintaining a strong, timely and active enforcement presence. Measures of success should include analysis demonstrating that national and regional initiatives are implemented in a manner (*e.g.*, using case selection, targeting, an appropriate mix of compliance tools and techniques) that result in equitable levels of deterrence and

environmental and human health improvements, including in areas with minority and/or low-income populations;

4. Enforcement and other compliance assurance actions are prioritized so as to minimize the risk to human health and the environment and maximize compliance, consistent with the goals of smart enforcement. Measures of success should include analysis demonstrating that prioritization criteria result in equitable levels of compliance assurance activities, including in areas with minority and/or low-income populations;
5. Whenever possible, enforcement actions should result in environmental or human health improvements, through pollution reductions and/or physical or management process changes. Measures of success should include analysis demonstrating that pollutant loading decreases equitably, including in areas with minority and low-income populations, as a result of compliance actions;
6. When practical, participate in collaborative problem solving with other Federal agencies to address local environmental justice concerns; participate in the environmental justice training collaborative; and continue to participate in the National Environmental Justice Advisory Committee meetings;
7. Consider issues such as cumulative risk, health disparities, and appropriate demographic issues in the context of gravity-based penalties, case development, referrals to the Department of Justice, and Supplemental Environmental Projects;

Enforcement

If an inspection identifies violations, the EPA Supplemental Environmental Projects Policy and other enforcement memoranda (addressing penalty determination) contain specific guidance on how environmental justice concerns should be taken into consideration. Matters pertaining to environmental justice should also be documented and transmitted to the Department of Justice for use in case development, establishment of penalties, and remedy selection. If a SEP is to mitigate a fine, the Region should ensure that it is equitable when compared with similar actions in other communities.

13. TRIBAL PROGRAM

EPA's enforcement and compliance assurance program works with federally-recognized Indian tribes (tribes) to employ the Smart Enforcement approach to promote compliance through the use of appropriate compliance and enforcement stewardship in Indian country and in areas outside of Indian of country where tribes have recognized rights and interests protected by treaty, statute, judicial decisions or other authorities, including Alaska. (hereinafter Indian country). Whether implemented directly by EPA or an approved tribe, selecting the appropriate tools - compliance assistance, incentives, monitoring, and enforcement - can provide important gains in environmental and human health protection. During FY 2005-2007, OECA and the regions intend to continue to increase their presence in Indian country.

In spring 2004, OECA intends to finalize the enforcement and compliance assurance program's *Protecting Public Health and the Environment Through Enforcement and Compliance Assurance in Indian Country: A Strategy for Results (Strategy)*, based upon comments received from tribes, states, and EPA regions and program offices. The *Strategy*, which will be issued under separate cover, is designed to help develop a common understanding among environmental managers and staff at the federal and tribal level about the nature of enforcement and compliance assurance programs. In addition, the *Strategy* outlines how EPA works with tribes to maximize compliance and reduce threats to public health and the environment in Indian country and other areas where Indian tribes and their members have rights and resources. This work is undertaken consistent with the federal government's trust and consultation responsibilities to tribes, government-to-government relationship with such tribes, EPA's authorizing statutes and implementing regulations, the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, and EPA's Strategic Goal 5: *Compliance and Environmental Stewardship*.

Following are the activities that OECA and the regions anticipate undertaking in FY 2005-2007 to implement the *Strategy*.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

OECA's compliance assistance and capacity building efforts in Indian country are designed to provide Federal facilities, non-tribally-owned or operated facilities, and tribal governments that own or manage regulated facilities with the information and support necessary to maintain compliance. Consistent with the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, and the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*, issued in January 2001, OECA and the regions utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities. To help implement this approach, during FY 2005/2007, the regions plan to work with tribes to increase the compliance of tribal and non-tribal facilities in Indian country with environmental statutes through the use of compliance and technical assistance and to continue to tailor compliance assistance tools for use

by tribes and facilities in Indian country. During FY 2005-2007, OECA's National Enforcement Training Institute (NETI) will continue to provide classroom training and self-instruction training materials to tribal environmental professionals.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

EPA conducts almost all compliance monitoring activities in Indian country because the Agency currently retains direct compliance and enforcement authority for most federal environmental programs in Indian country -- until such time as an EPA-approved program is in place for such areas. OECA will continue to work with the regions to address compliance monitoring issues in Indian country, including the potential authorization of tribal inspectors to conduct inspections on behalf of EPA. Regions should direct questions about authorization and the Guidance to OECA's Compliance Assessment and Media Programs Division. EPA works closely with tribes in carrying out compliance monitoring activities by consulting with tribes on inspection priorities and schedules and sharing information where appropriate.

Until tribal governments are delegated the authority to implement enforcement programs, EPA will inspect and, where appropriate, take enforcement actions in Indian country under its direct implementation authority against Federal facilities, privately-owned and tribally-owned facilities. Consistent with the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, and the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*, headquarters and regions will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion.

Performance Expectations

The regions will be asked to report on FY 2005-2007 Tribal Performance Measures. Specific reporting requirements will be issued at a later date.

- A. Regional Enforcement Coordinators should be directly involved in discussing the types of projects to fund with EPA's enforcement and compliance assurance tribal resources; these resources are distributed by OECA's Compliance Assistance and Sectors Programs Division (CASPD) each fiscal year. EPA's enforcement and compliance assurance tribal resources are available to directly or indirectly support the compliance assurance and enforcement program in Indian country related to: (1) solid waste landfills consistent with section 8001(a) of the Resource Conservation and Recovery Act (RCRA); and (2) activities consistent with a particular (or multiple) federal environmental statutory or regulatory provision(s). Regions use a variety of mechanisms - grants, contracts, cooperative agreements, and interagency agreements - to support these activities.
- B. Regional enforcement programs should report project summary and measurement information about the enforcement and compliance assurance tribal resources in work planning documents or similar reports back to CASPD.

- C. OECA is currently developing/adapting additional, appropriate performances measures. These measures will be consistent with the *Strategy* and the FY2005-2007 national and regional priorities.

DATA QUALITY

Complete and reliable information about the compliance status of facilities in Indian country is important to the success of enforcement and compliance assurance activities. Accurate information enables EPA and tribes to understand and determine their enforcement and compliance priorities. In addition to encouraging tribes to input and maintain data, EPA intends to work with tribes to help ensure that national enforcement and compliance data systems provide the accurate, timely and relevant information needed for effective prioritization. In FY, 2005-2007 the regions should use data developed through regional inspections and existing EPA databases to help identify and address potential areas of noncompliance.

14. CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING CORE PROGRAM

Criminal enforcement is the Agency's response to suspected or known illegal or culpable conduct that presents imminent and substantial endangerment to human health and/or the environment. It is designed to deter others from future similar illegal behavior and to maintain a level playing field in which violators do not reap competitive advantage from criminal behavior. The criminal enforcement core program maintains a criminal enforcement presence across all program areas.

Criminal Investigation Division (CID)

The purpose of the criminal enforcement core program is to more effectively integrate criminal enforcement with the regional enforcement programs. To achieve this purpose, each region will continue to coordinate and cooperate closely with its respective Special Agents in charge of the region's CID area office. This includes, but is not limited to, the identification, investigation and prosecution of criminal violations of Federal environmental laws, with a particular emphasis on identifying criminal activity which victimizes environmental justice communities.¹⁹ In order to promote integration and cooperation between each region and CID, the regions will:

- D. Identify leads appropriate for criminal investigations based upon the criteria in the January 12, 1994, Memorandum on the Exercise of Investigative Discretion. This document will be distributed to and assimilated by all Office of Regional Counsel (ORC) attorneys and regional enforcement staff;
- E. Submit appropriate criminal leads to the regional screening process where final decisions will be made as to whether a violation will be pursued administratively, civilly, or criminally;
- F. Assist CID in identifying, targeting, and prosecuting persons who provide or maintain false data in areas within EPA's jurisdiction, such as false water monitoring reports;
- G. Provide technical support to CID investigations, providing in-house personnel as witnesses when necessary, and maintain legal staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes;
- H. Provide regional support for multi-media prosecutions of alleged criminal violations; and

¹⁹The CID field office structure is currently being re-evaluated as part of the implementation of the December 15, 2003 OCEFT Management Study. Several of the criminal program-regional relationships described in this section may be revised or refined further once final decisions regarding the future structure of the field offices has been made by senior OCEFT and OECA management.

- I. Ensure that all environmental measurements or samples used to support EPA criminal investigations will be gathered, recorded and analyzed in a manner that complies with the EPA quality assurance system, and that all evidence collected will be handled and kept secure in accordance with EPA policies for the custodial management of evidence.

National Enforcement Investigations Center (NEIC)

The NEIC will continue to direct its new activities toward national and regional initiatives and priorities as described in the OECA program guidance and the regional plans. NEIC project selection will also be guided by the Assistant Administrator's themes, the Agency Strategic Plan, GPRA, and the national goals effort. NEIC activities will be focused on an enforcement/compliance end point. Furthermore, NEIC will be examining requests for assistance based upon the potential for producing measurable environmental results and the degree to which activities provide opportunity to use or enhance unique capabilities (e.g., multi-disciplined teams, in-depth process evaluations, complex analytical procedures, etc.). As in the past, NEIC will continue to support ongoing projects to the extent commitments were made in previous years, including case preparation and enforcement support.

The Regions should continue to send NEIC their annual requests for specific civil inspection, investigative, and technical support. NEIC will evaluate the requests and discuss them with each individual region in order to develop the final list and schedule of support activities.

To initiate discussions necessary to plan and schedule appropriate enforcement support for FY 2005/2007, NEIC would like to receive requests from the regions by August 1, 2004. It is important that NEIC receive all regional submissions by August 1, 2004 to allow for an examination of all projects in line with resources. These requests should be as specific as possible, and include information to help NEIC determine whether they can provide the requested support.

National Enforcement Training Institute (NETI)

NETI is responsible for developing, coordinating, publishing and delivering training for federal, state, local and tribal attorneys, inspectors, civil and criminal investigators and technical experts in all phases of environmental enforcement. NETI was established by the 1990 Pollution Prosecution Act and is EPA's only Congressionally mandated training entity. NETI promotes a balanced training approach using traditional classroom training, distance learning tools such as computer-based training, and cooperative agreements with other organizations to reach a broad audience.

Due to realities such as Homeland Security, increased enforcement capacity demands by our state partners, reduced resources, and new agency web initiatives, there are now changes in the way environmental enforcement training is promoted and evaluated. In April 2002, NETI

formally assumed the responsibility of tracking all enforcement training provided by EPA, including both HQ (OECA) and the regions. This includes prospective planning, in order to effectively market training opportunities and avoid duplication of effort, and will result in a National Enforcement Training Plan. In addition, NETI will continue its retrospective review of activities and statistics for end-of-year reporting and GPRA purposes.

An important part of this effort is the EPA Enforcement Training Network, which includes representatives from each OECA office and every region. These contacts are vitally important to the effective coordination of training efforts. Network members should work with appropriate management/technical staff, and interactively within the Enforcement Network to provide the following information:

- By August 30, 2004 - Regions are requested to submit proposed course plans and/or course delivery support requests for the FY 2004 MOA cycle. Please provide the name of the course, a brief description, support needed if any, a course contact name, phone number and email address.
- By September 15, 2004 - NETI will compile regional training plans and course delivery support needs. NETI will distribute consolidated report to regions and OECA offices.
- By October 10, 2004 - NETI will conduct a meeting of regional and HQ enforcement training contacts to discuss a proposed national training plan and tentative support commitments.
- November/December 2004 - NETI publishes a National Course Catalog for Calendar Year 2005